

**SCARY ALEX ACOSTA?:** Most employers anticipate "a moderate or significant impact" on their business from Labor Department enforcement of labor laws (78 percent), according to a 2019 survey of more than 1300 businesses by the management-side law firm Littler Mendelson. EEOC came in second (77 percent), and the Affordable Care Act placed a distant third (57 percent).

**It's a surprise to learn** that DOL and EEOC inspire such worry, because they haven't achieved all that much since President Barack Obama left office. Michael Lotito, co-chair of Littler's Workplace Policy Institute, concedes the "lack of activity on regulatory matters over the past two years," but he says agencies are now "moving quickly to complete their regulatory agendas before the 2020 election season." The coming year will be one of "preparation," he said in a statement, "as the race is on to finalize rules that could have an enormous impact for employers in the coming years."

**Littler's survey** indicated that more employers are addressing harassment in the workplace, with 63 percent of respondents saying they've provided additional training, up from 55 percent in Littler's 2018 survey. But only 48 percent of employers said they were auditing their pay practices to address gender pay equality, and more than one third (37 percent) said they've done nothing to address pay equity issues. Regarding state regulations, 69 percent said complying with sick leave requirements has created difficulties, and more than half (54 percent) said marijuana legalization laws are presenting compliance challenges. Read the report [here](#).

## UNIONS

**UNIONS BUTT HEADS:** Contract talks between the SEIU and the D.C. local of the Office and Professional Employees International Union -- which represents workers at the SEIU's D.C. headquarters -- are at a standoff following weeks of mediation and a strike authorization from the OPEIU in March. The SEIU issued a statement Tuesday morning that OPEIU Local 2's bargaining committee rejected "a path to settlement that included the kind of provisions that our members fight for in their contracts, and that not-yet-union workers can only dream of."

**SEIU on Tuesday issued a revised** last, best, and final offer to OPEIU that the SEIU said "includes improvements to the contract that were discussed in mediation." It would improve wages by 8 percent "over the course of the contract" and provide current staff with lifetime job security protections "upon five years of

service." But David Hoskins, chief shop steward of OPEIU Local 2, told Morning Shift that the offer eliminated layoff protections for new employees. The OPEIU has not notified the SEIU whether it will accept the offer, according to Hoskins. Read the SEIU's statement [here](#).

## HAPPENING TODAY

**At 10 a.m.:** The Senate will vote on whether to limit debate on the nomination of Janet Dhillon to the Equal Employment Opportunity Commission. If the Senate invokes cloture, debate on Dhillon will be limited to two hours under the new Senate rules, setting up a confirmation vote for this afternoon. Dhillon's confirmation would give the EEOC a quorum for the first time since January. Early last month more than two dozen business groups, including the Chamber of Commerce, the National Restaurant Association, and the International Franchise Association, wrote [Mitch McConnell](#) urging him to confirm Dhillon, arguing that the agency's lack of a quorum has prevented it from moving forward on regulatory matters.

**Also at 10 a.m.:** The House Ways and Means committee will hold a hearing on paid family and medical leave. 1100 Longworth. More info [here](#).

**At 10:30 a.m.:** The House Appropriations Committee will mark up a fiscal year 2020 spending bill that provides funds for the Labor Department. Rayburn 2359. More on the markup [here](#). More on the bill [here](#).

**At 11:30 a.m.:** Lawmakers will hold a news conference with retirees represented by the United Mine Workers of America on "preserving coal miners' pensions." Sens. [Joe Manchin](#), (D-W.Va.); Shelley Moore Capito, (R-W.Va.); [Rob Portman](#), (R-Ohio); [Doug Jones](#), (D-Ala.) and Reps. [David McKinley](#), (R-W.Va.); [Peter Welch](#), (D-Vt.); [Terri Sewell](#), (D-Ala.) and [Rodney Davis](#), (R-Ill.), will participate. The event takes place at the House Triangle.

**At 1 p.m.:** The New Democrat Coalition will hold a news conference on [H.R. 5 \(116\)](#), the "Equality Act," which seeks "to end discrimination against lesbian, gay, bisexual and transgender Americans." The event takes place at the House Triangle.

**At 1:30 p.m.:** House Democrats and AFL-CIO President Richard Trumka will hold a conference call to discuss the "Protecting the Right to Organize (PRO) Act," ahead of a hearing on the legislation.

**At 2 p.m.:** A House Education and Labor subcommittee will hold a hearing to discuss the Democrats' labor reform bill, released last week, [H.R. 2474 \(116\)](#). Rayburn 2175. More [here](#).

**At 2:30 p.m.:** A Senate Judiciary subcommittee will hold a hearing to examine the influx of migrants at the U.S.-Mexico border. Manuel Padilla, a Border Patrol official and director of a Trump-created border task force will testify. Dirksen 226. More [here](#).

## COFFEE BREAK

— "The Green New Deal Needs Labor's Support. We Asked Sara Nelson How To Get It." from [In These Times](#)

— "Less than 1 Percent of US Farmworkers Belong to a Union. Here's Why." from [Civil Eats](#)

— "U.S. asylum screeners to take more confrontational approach as Trump aims to turn more migrants away at the border," from [The Washington Post](#)

— "Companies scramble to prepare for Trump's new taxes on Chinese goods," from [POLITICO](#)

— "Decade in the Red: Trump Tax Figures Show Over \$1 Billion in Business Losses," from [The New York Times](#)

**THAT'S ALL FOR MORNING SHIFT!**

[View online](#)

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**From:** [Bashford, Jo Ann](#)  
**To:** [Vines, Tomika](#)  
**Cc:** [Gavigan, Teresa](#); [Ring, John](#)  
**Subject:** PowerPoint -- Report from the NLRB  
**Date:** Tuesday, May 7, 2019 8:54:17 AM  
**Attachments:** [RING Slide Pres re NLRB - May 2019.pptx](#)

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Tomika: As promised, attached is the Chairman's presentation for Thursday in Chicago. Please let me know if you have any issues accessing the document.

With kind regards,

***Jo Ann Bashford***

*Confidential Assistant,  
Legal Administrative Specialist  
Office of the Chairman  
National Labor Relations Board  
1015 Half Street, SE  
Washington, DC 20570  
(202) 273-0837  
[joann.bashford@nrlrb.gov](mailto:joann.bashford@nrlrb.gov)*



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# Report from the NLRB

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**John F. Ring**

Chairman

National Labor Relations Board

May 2019

This presentation refers to various NLRB decisions and orders. However, the actual decisions and orders should be regarded as the exclusive source of guidance regarding relevant issues. This presentation is not to be reproduced or distributed.

## Current Composition

### Republicans



**Chairman**

**John F.  
Ring**

*(end of term  
12/16/2022)*



**Marvin E.  
Kaplan**

*(end of term  
08/27/2020)*



**William J.  
Emanuel**

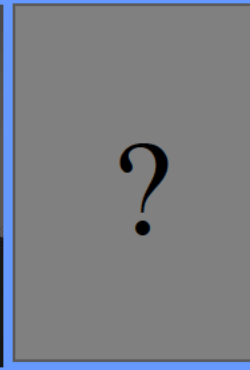
*(end of term  
08/27/2021)*

### Democrats



**Lauren  
McFerran**

*(end of term  
12/16/2019)*



### Republican



**Peter B.  
Robb**

*(end of term  
12/16/2021)*

Board Members

General  
Counsel

On December 17, 2019

Republicans



**Chairman**

**John F.  
Ring**

*(end of term  
12/16/2022)*



**Marvin E.  
Kaplan**

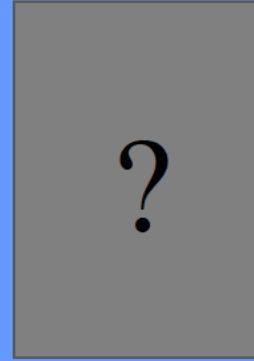
*(end of term  
08/27/2020)*



**William J.  
Emanuel**

*(end of term  
08/27/2021)*

Democrats



Republican



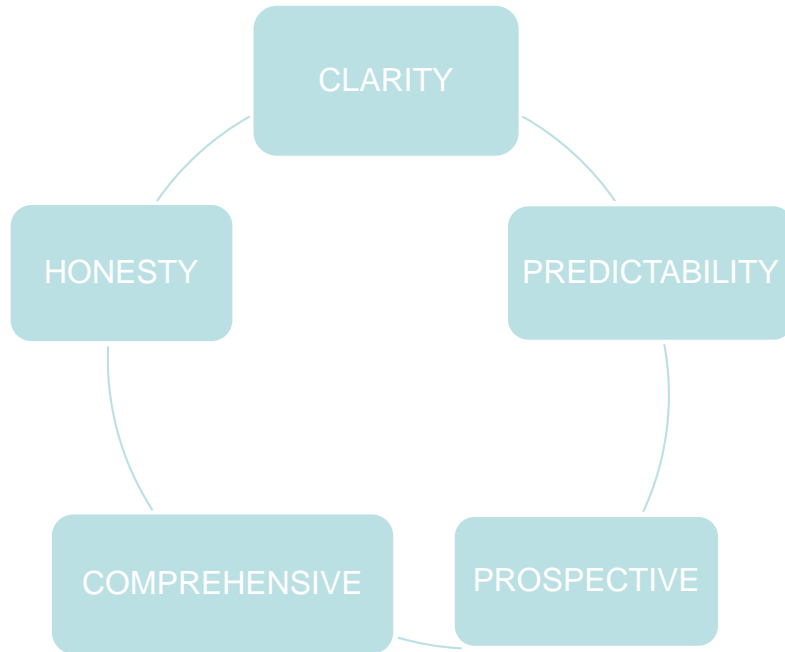
**Peter B.  
Robb**  
*(end of term  
12/16/2021)*

Board Members

General  
Counsel



# ***RULEMAKING***



- **Joint Employer Standard**
  - NPRM Sept 14, 2018
  - Comment period closed Feb 11, 2019
- **Election Protection**
  - Blocking Charges
  - Voluntary Recognition
  - 8(f)/9(a) Conversions
- **2014 Election Rules**
  - RFI Dec. 2017
- **Other**







***Super Shuttle DFW, Inc.*** - Independent Contractor  
367 NLRB No 75 (January 25, 2019)

***United Nurses (Kent Hospital)*** - Beck Chargeable Fees  
367 NLRB No. 94 (March 1, 2019)

***Ridgewood Health Care Center*** - Successorship  
367 NLRB No. 110 (April 2, 2019)

***Alstate Maintenance, LLC*** - PCA  
367 NLRB No. 68 (January 11, 2019)

***The Boeing Co.*** - Rules, Handbooks, Policies  
365 NLRB No. 154 (December 14, 2017)



- Employer Use of **Employer Email Systems** for union organizing and other protected concerted activity (**Purple Communications**) – *Rio All-Suites Hotel and Casino*
- **Charter Schools** Jurisdiction





- **Employment policies, rules and handbooks**
- **Workplace Investigation Confidentiality**  
(*Banner Estrella*)
- **Employee Witness Statements**  
(*Piedmont Gardens*)
- **Definition of Supervisor**  
(*Buchanan Marine, G4S Government Solutions and many more*)
- **Discipline Bargaining**  
(*Total Security Management, Alan Ritchey*)
- **Permanent Replacements (“indep unlawful purpose”)**  
(*Piedmont Gardens*)
- **Other Successorship Issues**

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# Report from the NLRB

## *A Board Member's Perspective*

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**John F. Ring**

Chairman

National Labor Relations Board

May, 2019

This presentation refers to various NLRB decisions and orders. However, the actual decisions and orders should be regarded as the exclusive source of guidance regarding relevant issues. This presentation is not to be reproduced or distributed.

**From:** [Lucy, Christine B.](#)  
**To:** [Roberts, Tracey](#); [Ring, John](#)  
**Cc:** [Witkin, Cynthia](#)  
**Subject:** RE: House LHHS Report Language  
**Date:** Wednesday, May 8, 2019 10:02:43 AM

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Not a problem, thanks Tracey.

**Christine B. Lucy**

Chief of Staff and Special Counsel to the Chairman  
National Labor Relations Board  
1015 Half Street SE, Office 5100, Washington, DC 20570  
[christine.lucy@nrlb.gov](mailto:christine.lucy@nrlb.gov) | 202-273-3914  
(m) 202.701.4804

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**From:** Roberts, Tracey  
**Sent:** Tuesday, May 7, 2019 1:52 PM  
**To:** Ring, John <[John.Ring@nrlb.gov](mailto:John.Ring@nrlb.gov)>; Lucy, Christine B. <[Christine.Lucy@nrlb.gov](mailto:Christine.Lucy@nrlb.gov)>  
**Cc:** Witkin, Cynthia <[Cynthia.Witkin@nrlb.gov](mailto:Cynthia.Witkin@nrlb.gov)>  
**Subject:** RE: House LHHS Report Language

Apologies for the typo! This information has also been sent to Peter and Alice.

Tracey Roberts  
Office of Congressional and Public Affairs  
National Labor Relations Board  
202-273-0187

---

**From:** Roberts, Tracey  
**Sent:** Tuesday, May 7, 2019 1:48 PM  
**To:** Ring, John <[John.Ring@nrlb.gov](mailto:John.Ring@nrlb.gov)>; Lucy, Christine B. <[Christine.Lucy@nrlb.gov](mailto:Christine.Lucy@nrlb.gov)>  
**Cc:** Witkin, Cynthia <[Cynthia.Witkin@nrlb.gov](mailto:Cynthia.Witkin@nrlb.gov)>  
**Subject:** House LHHS Report Language

Hi John and Christine,

The report that accompanies the LHHS Appropriations bill is now available:  
[https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/FY2020%20LHHS\\_Report.pdf](https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/FY2020%20LHHS_Report.pdf)

The markup of the bill is scheduled for tomorrow, May 8, 2019 at 10:30am.

The NLRB Specific Language from the report is as follows:

The Committee also recommends \$341,500,000 for the National Labor Relations Board, an increase of \$67,276,000 over the fiscal year 2019 enacted level and \$99,950,000 over the fiscal year 2020 budget request. This increase will address the 17 percent decline in field staff the Board has seen in over just two years by supporting 300 additional regional field staff and two unfilled regional director positions.

## NATIONAL LABOR RELATIONS BOARD

### SALARIES AND EXPENSES

Appropriation, fiscal year 2019 .....	\$274,224,000
Budget request, fiscal year 2020 .....	241,550,000
Committee Recommendation .....	341,500,000
Change from enacted level .....	+67,276,000
Change from budget request .....	+99,950,000

The National Labor Relations Board (NLRB) is an independent agency responsible for enforcing U.S. labor law related to collective bargaining and unfair labor practices, including the National Labor Relations Act (NLRA) of 1935.

The Committee is concerned that NLRB field staff have declined by 17 percent over just two years. Further, the Committee is concerned that multiple regional director positions remain unfilled. To restore the ability of the NLRB to fulfill its statutory mission, the Committee provides an increase of \$67,276,000 over fiscal year 2019 and \$99,950,000 over the fiscal year 2020 budget request.

With this increase, the Committee directs the NLRB to hire at least 300 additional regional field staff and fill all open regional director positions.

The Committee is also concerned by questions of conflicts of interest surrounding NLRB board members. The Committee requests a report no less than 90 days from the enactment of this Act from the NLRB on the findings, recommendations, and implementation of its Comprehensive Internal Ethics and Recusal Review, specifically all actions that have been taken to ensure case decisions and rulemakings are compliant with all applicable ethics standards and any failures to comply with those standards.

To protect public trust in NLRB's work and decision-making, the Committee directs the board to make board member recusal obligations publicly available within 60 days of the enactment of this Act and updated monthly thereafter. In addition, within the funding increase for NLRB, \$1,000,000 above amounts provided in fiscal year 2019 is directed to the NLRB Office of Inspector General (OIG) to investigate the process, findings, and recommendations surrounding the board's comprehensive internal ethics and recusal review.

The Committee expects the increase in funds to help support an additional FTE to assist with this investigation.

The Committee is deeply concerned that the current board majority routinely breaks with the NLRB's traditional practice of providing public notice and an invitation to file briefs before reconsidering significant precedent. To restore public participation in critical NLRB matters and to promote informed-decision making, the Board shall immediately resume its long-standing practice of providing public notice and an invitation to file briefs before issuing decisions unless, within 90 days of enactment of this Act, it provides a report to the Committees on Appropriations with an explanation of the Board's current method for deciding to invite public notice and briefing.

On March 13, 2019, the NLRB Office of the General Counsel (OGC) issued Operations-Management Memorandum 19-05, which discouraged Regional Directors from issuing subpoenas when investigating whether to issue a complaint. The General Counsel has a Congressional mandate to

investigate unfair labor practices by collecting documentary evidence, summoning witnesses, and taking testimony—a statutory responsibility, which includes and often requires the issuance of subpoenas. Therefore, within 90 days of enactment of this Act, the Committee directs the General Counsel, along with the Divisions of Operations Management and Legal Counsel, to provide the Committees on Appropriations with an impact analysis of the memorandum’s policies on the quality of NLRB investigations of charges.

The Committee is deeply concerned about the impact of Presidential Executive Order 13843 on the judicial independence of administrative law judges (ALJs). The Order eliminates the competitive hiring process for ALJs and has the potential impact of converting independent adjudicators to political appointees, undermining longstanding principles of fair and unbiased consideration of matters of vital importance to the American people. ALJs must be independent decision-makers and it is the Committee’s expectation that NLRB maintain the highest standards for appointment of ALJs. Within 60 days of enactment of this Act, NLRB is directed to provide to the Committees on Appropriations and Oversight and Government and Reform of the House of Representatives a report explaining the process, qualification standards, and criteria used to recruit, evaluate and hire ALJs under the executive order.

The Committee is deeply concerned by several recent decisions that weaken workers’ collective bargaining rights. PCC Structurals (365 NLRB No. 160; Dec. 15, 2017) allows employers to more easily gerrymander union elections by requiring the NLRB to include employees who did not previously express an interest in the union. Further, SuperShuttle DRW, (367 NLRB No. 75; Jan. 25, 2019) allows employers to more easily classify their workers as independent contractors instead of employees by deviating from the common law standard for determining an employee and instead focusing on whether the worker has “entrepreneurial opportunity.”

This test has no basis in the NLRA or the common law. In addition, the Committee is concerned by the NLRB’s joint employer proposed rulemaking, which will make it easier for unscrupulous employers to sidestep their legal responsibility to bargain with their employees. The Committee strongly urges the NLRB to abandon any proposal that weakens workers’ rights while protecting bad actors from liability. The Committee is also deeply concerned that the NLRB failed to hold any public hearings as part of its joint employer rulemaking process and strongly urges the Board to do so prior to publishing any final rule.

Tracey Roberts  
Office of Congressional and Public Affairs  
National Labor Relations Board  
202-273-0187

**From:** [Lucy, Christine B.](#)  
**To:** [Ring, John](#)  
**Subject:** RE: Interview request, the Palms and the Culinary and Bartenders Union  
**Date:** Wednesday, May 22, 2019 4:58:06 PM

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I'm not (b) (5), (b) (7)(A) - Station Casinos' Palms Casino  
Resort. (b) (5), (b) (7)(A)

**Christine B. Lucy**

Chief of Staff and Special Counsel to the Chairman  
National Labor Relations Board  
1015 Half Street SE, Office 5100, Washington, DC 20570  
[christine.lucy@nrlb.gov](mailto:christine.lucy@nrlb.gov) | 202-273-3914  
(m) 202.701.4804

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**From:** Witkin, Cynthia  
**Sent:** Wednesday, May 22, 2019 2:14 PM  
**To:** Lucy, Christine B. <[Christine.Lucy@nrlb.gov](mailto:Christine.Lucy@nrlb.gov)>  
**Subject:** FW: Interview request, the Palms and the Culinary and Bartenders Union

Hi Christine, in addition to the other decision we discussed, I am getting several questions about the decision below. (b) (5), (b) (7)(A)  
(b) (5), (b) (7)(A)

Thanks!  
Cynthia

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**From:** SM-Publicinfo  
**Sent:** Wednesday, May 22, 2019 2:08 PM  
**To:** Witkin, Cynthia <[Cynthia.Witkin@nrlb.gov](mailto:Cynthia.Witkin@nrlb.gov)>  
**Subject:** FW: Interview request, the Palms and the Culinary and Bartenders Union

**From:** Bailey Schulz <[bschulz@reviewjournal.com](mailto:bschulz@reviewjournal.com)>  
**Sent:** Wednesday, May 22, 2019 12:51 PM  
**To:** SM-Publicinfo <[Publicinfo@nrlb.gov](mailto:Publicinfo@nrlb.gov)>  
**Subject:** Interview request, the Palms and the Culinary and Bartenders Union

Hello,

This is Bailey Schulz from the Las Vegas Review-Journal.

I just got word that the NLRB issued a decision and order last week that found Station Casinos' Palms

Casino Resort unlawfully refused to recognize and bargain with the Culinary and Bartenders Unions, and had a couple questions. My deadline is 3:00 p.m. PST, so it'd be great if I could chat with someone/receive a statement via email before then.

My questions are:

*What sort of repercussions would there be for Palms now what the NLRB issued a decision that Palms is acting unlawfully?*

*What are the next steps for the NLRB in this case? Palms? The Unions?*

*What sort of impact does this decision have on the union/union members?*

*What does it mean when a company fails/refuses to recognize and bargain with a union?  
What might that look like?*

Thanks,

--

Bailey Schulz  
Business Reporter

[1111 W. Bonanza Road, Las Vegas, Nevada 89106](mailto:1111.W.Bonanza.Road.Las.Vegas.Nevada.89106)

P. 702.383.0233 C.319.325.5782



(b) (5), (b) (7)(A)

(b) (5), (b) (7)(A)

CASE NUMBER	CASE NAME	PANEL	ORIG OFFICE	STATUS
(b) (5), (b) (7)(A)	(b) (5), (b) (7)(A)	(b) (5), (b) (7)(A)	(b) (5), (b) (7)(A)	(b) (5), (b) (7)(A)

Thanks,

**Roxanne Rothschild**  
Executive Secretary  
National Labor Relations Board  
1015 Half Street SE, Office 5010, Washington, DC 20570  
[roxanne.rothschild@nrlb.gov](mailto:roxanne.rothschild@nrlb.gov) | 202-273-2917

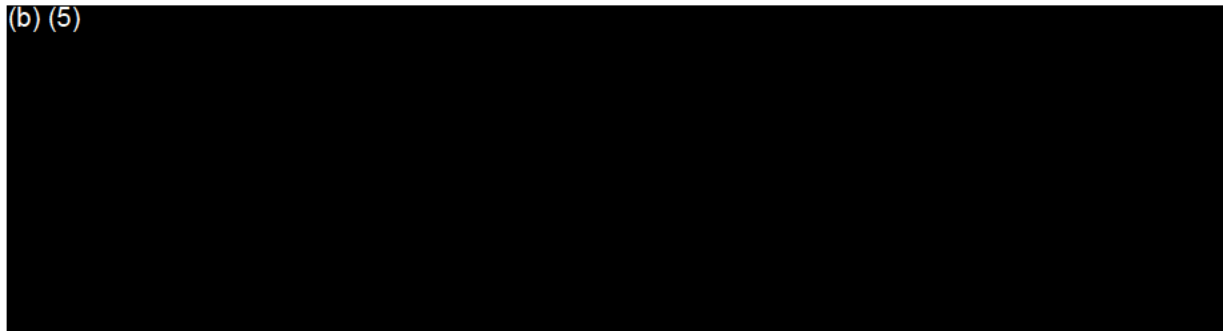


**From:** (b) (6), (b) (7)(C)  
**To:** (b) (6), (b) (7)(C)  
**Cc:** (b) (6), (b) (7)(C)  
**Subject:** RE: Volkswagen-(b) (5)  
**Date:** Friday, May 10, 2019 10:33:36 AM  
**Attachments:** [Volkswagen - motion to lift stay.pdf](#)  
[Volkswagen - order revoking certification.docx](#)  
[Volkswagen - order dismissing complaint and withdrawing NOH.pdf](#)

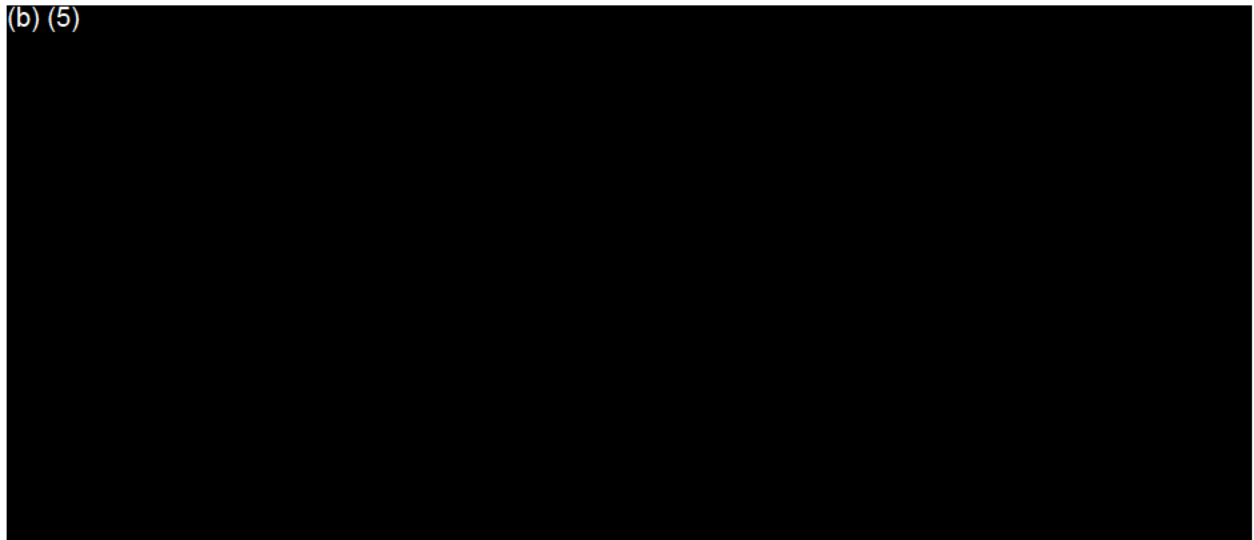
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Good morning all,

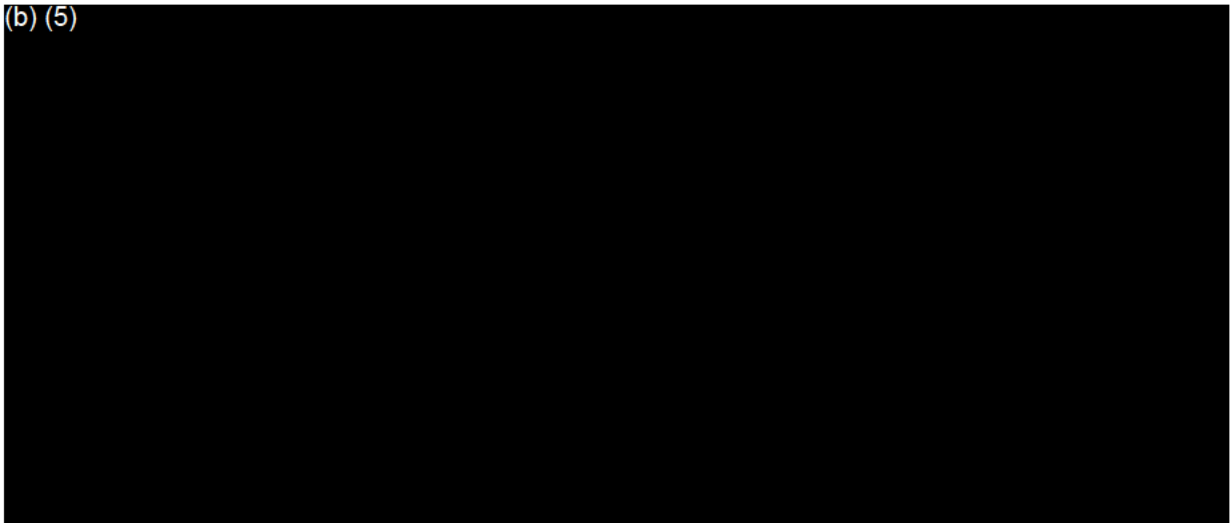
(b) (5)



(b) (5)



(b) (5)



(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

---

**From:** (b) (6), (b) (7)(C)

**Sent:** Friday, May 10, 2019 9:49 AM

**To:** (b) (6), (b) (7)(C) @nlrb.gov; (b) (6), (b) (7)(C) @nlrb.gov;

(b) (6), (b) (7)(C) @nlrb.gov; (b) (6), (b) (7)(C) @nlrb.gov;

(b) (6), (b) (7)(C) @nlrb.gov; (b) (6), (b) (7)(C) @nlrb.gov; (b) (6), (b) (7)(C)

<John.Ring@nlrb.gov>; (b) (6), (b) (7)(C) @nlrb.gov; (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) @nlrb.gov; (b) (6), (b) (7)(C) @nlrb.gov

**cc:** (b) (6), (b) (7)(C) @nlrb.gov; (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) @nlrb.gov

**Subject:** Volkswagen- (b) (5)

Good morning, everyone—

(b) (5)



Thanks,

(b) (6), (b) (7)(C)

**From:** (b) (6), (b) (7)(C)  
**To:** Ring, John  
**Cc:** (b) (6), (b) (7)  
**Subject:** (b) (5)  
**Date:** Friday, May 10, 2019 7:58:13 AM  
**Attachments:** [vw motion to lift stay.pdf](#)

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John –

(b) (5)

Thanks,

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Office of Chairman Ring

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**VOLKSWAGEN GROUP OF AMERICA  
CHATTANOOGA OPERATIONS, LLC,**

**Employer**

**and**

**Case No. 10-RC-239234**

**INTERNATIONAL UNION, UNITED  
AUTOMOBILE, AEROSPACE AND  
AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA (UAW),**

**Petitioner.**

\_\_\_\_\_ /

**PETITIONER INTERNATIONAL UNION, UAW’S MOTION TO LIFT STAY**

COMES NOW, Petitioner International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), and respectfully moves the Board to lift the stay of proceedings entered in the above-captioned case on May 3, 2019 (the “Stay”). As argued herein, all the purported bars for an election in the wall-to-wall unit sought by Petitioner have been eliminated. Accordingly, the Stay should be lifted so that NLRB Region 10 may resume processing the Petition in Case No. 10-RC-239234 and determine if an election is to be directed in a wall-to-wall unit at Volkswagen Group of America Chattanooga Operations, LLC (“Volkswagen”).

**I. Procedural History**

On February 2, 2014, Volkswagen filed a petition in case 10-RM-121704 seeking an election of, “All regular full-time and regular part-time production and maintenance employees” at its Chattanooga, Tennessee assembly plant. Volkswagen thereafter entered into a Stipulated

Election Agreement with UAW for an election on February 12-14, 2014. An election was held, and UAW was not selected as bargaining representative by a majority of voting employees.

On October 23, 2015, United Auto Workers Local 42, a local union affiliate of International Union, UAW (“Local 42”), filed a petition for an election of all full-time and regular part-time maintenance employees at Volkswagen. *See* Case No. 10-RC-162530. NLRB Region 10 held a hearing, and the Regional Director issued a decision and direction of election on November 18, 2015, finding the petitioned-for maintenance employees to constitute an appropriate unit. An election was held over two days on December 3 and 4, 2015. Local 42 prevailed by a vote of 108 to 44. The Regional Director issued a Certification of Representation on December 15, 2015. Volkswagen refused to bargain with Local 42 - and has never bargained with Local 42 - and argued that the only appropriate bargaining unit at its Chattanooga plant is a wall-to-wall production and maintenance unit.

Between December 2015 and November 2017, Local 42 filed a total of four unfair labor practice charges alleging refusal to bargain and/or unilateral change. Case Nos. 10-CA-166500 and 10-CA-169340 were consolidated for complaint, and the Board held that Volkswagen’s refusal to bargain violated Section 8(a)(5). *See Volkswagen Group of Am., Inc.*, 364 NLRB No. 110 (2016). Volkswagen appealed the Board’s ruling to the D.C. Circuit Court of Appeals, but prior to the Court of Appeals issuing a decision, the Board requested remand of the cases, citing its decision in *PCC Structural*s, 365 NLRB No. 160 (2017). On December 26, 2017, the Court of Appeals remanded the case to the Board. A complaint was also issued in Case No. 10-CA-191620, the third charge filed by Local 42, but no further action was taken on the complaint. And, no complaint was issued in the fourth charge filed by Local 42, Case No. 10-CA-209575.

On April 9, 2019, Petitioner filed the instant Petition seeking to represent a unit of all production and maintenance workers at the Chattanooga plant. NLRB Region 10 scheduled a pre-election hearing for April 17, 2019. Prior to the hearing, on April 15, 2019, Local 42 disclaimed interest in representing the maintenance unit; withdrew the petition in Case No. 10-RC-162530; and withdrew the unfair labor practice charges pending in Case Nos. 10-CA-166500, 10-CA-169340, 10-CA-191620 and 10-CA-209575.

A few hours after Local 42 disclaimed interest, withdrew the maintenance unit petition, and withdrew the pending charges, Volkswagen filed an “Emergency Motion to Dismiss Petition Based on Prior Certification of the Maintenance Unit,” claiming that the production and maintenance unit petition is barred by the certification of the maintenance unit. Petitioner filed a response in opposition to Volkswagen’s motion to dismiss.

On April 16, 2019, the Regional Director issued an Order “deferring ruling on the Employer’s Motion to Dismiss pending development of a record at hearing, scheduled for April 17, 2019, and consideration of that record evidence and post-hearing briefs.” On April 16, Volkswagen filed its statement of position, arguing that, “The petition in the proposed unit is barred by a certification bar. The maintenance employees cannot be included in the proposed production and maintenance unit. The Board has already issued a certification that such employees are represented in a separate unit by another union...” The April 17, 2019 hearing proceeded. That same day, UAW and Counsel for the NLRB General Counsel submitted a Joint Motion to Dismiss the Complaint issued in Cases 10-CA-166500 and 10-CA-169340.<sup>1</sup>

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<sup>1</sup> On April 16, 2019, NLRB Region 10 approved Local 42’s request to withdraw the charge in 10-CA-191620 and dismissed the complaint in that case, and Region 10 approved the withdrawal of the charge in 10-CA-209575 as well.

Following the conclusion of the hearing on April 17, Volkswagen filed a Request for Review and Motion to Stay with the NLRB, seeking review of the Regional Director's order deferring the ruling on its motion to dismiss and a stay of further proceedings on the instant Petition. On April 19, Petitioner filed a response in opposition to Volkswagen's request for review.

On May 3, 2019, the Board granted the Joint Motion to Dismiss the Complaint issued in Cases 10-CA-166500 and 10-CA-169340 and remanded the cases to Region 10. Also, on May 3, the Board in a 2-1 decision granted Volkswagen's request to stay all proceedings in the instant case.

On May 6, 2019, the Regional Director for NLRB Region 10 granted Local 42's request to withdraw the charges in 10-CA-166500 and 10-CA-169340, dismissed the complaint, and closed the cases. A copy of the Regional Director's May 6 Order is attached as Exhibit "1". Also, on May 6, the Regional Director for NLRB Region 10 revoked the Certification of Representation issued in Case 10-RC-162530. A copy of the Order Revoking Certification is attached as Exhibit "2".<sup>2</sup>

## **II. The Stay imposed on May 3 should be lifted by the Board because grounds for the Stay no longer exist**

In its Request for Review and Motion to Stay, Volkswagen argued that:

The unique circumstances of this case, in which a union and a Regional Director continue to proceed towards an election in a unit containing a group of employees for whom a representative has already been certified and before that certification year has expired, demonstrate that extraordinary relief in the form of a stay of all further proceedings in the representation case is appropriate.

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<sup>2</sup> On May 7, the Region 10 Regional Director issued an Errata to include Right to Request Review procedures that were erroneously omitted from the May 6 order. The Order and Errata are included together as Exhibit "2".

(VW Req. for Rev. at p. 9). Volkswagen argued that a Stay was warranted because, “Continuing these proceedings...despite the fact that the Local Union has already been certified as the bargaining agent of the maintenance employees, and its certification has not been revoked... is fundamentally inconsistent with the prior certification and ‘necessarily at odds’ with the principle of exclusive representation.” (*Id.*). In footnote 12, Volkswagen argued that “Although the International Union contends the Local Union’s disclaimer of interest resolved this issue, the Board must take action to revoke the certification and dismiss the unfair labor practice charges over which it has jurisdiction... The prior certification and the pending unfair labor practices need to be decided first...” Volkswagen further went on to argue that the proceeding should be stayed because:

There are unfair labor practice charges predicated on the certification of the maintenance unit still pending before the Board. These charges allege violations of Section 8(a)(5) of the Act and seek to establish a bargaining relationship, the remedy for which includes an affirmative bargaining order. There is no question that the potential issuance of an order requiring Volkswagen to bargain with the Local Union as the representative of the maintenance-only unit is inherently inconsistent with the International Union’s Petition seeking to represent an overlapping unit of production and maintenance employees. *While the International Union asserts that the Local Union has withdrawn its unfair labor practice charges, the withdrawal of the test-of- certification complaint has not been approved, and the unfair labor practice case has not been dismissed. As such, the representation case should not move forward until these issues are fully resolved by the Board.*

(VW Req. for Rev. at pp. 10-11) (emphasis added).

Volkswagen’s Motion to Stay is predicated entirely on the existence of the certification in 10-RC-162530 and the charges in 10-CA-166500 and 10-CA-169340. Volkswagen provided no other basis for a Stay of the instant Petition other than these matters.

Now that the Board has remanded the cases to Region 10 and the Regional Director has closed the cases in 10-CA-166500 and 10-CA-169340 and revoked the certification in 10-RC-



162530, all of these purported bars to an election in the wall-to-wall unit have been removed.

Therefore, there is no basis to continue the Stay, because Volkswagen's reasons for the Stay no longer exist. In other words, all issues raised by Volkswagen in its Motion to Stay have been "fully resolved" and there is no basis for any further Stay of the proceedings. As a result, Petitioner respectfully requests that the Stay be immediately lifted.

### **III. Conclusion**

The only arguments in support of Volkswagen's Motion to Stay were the pendency of the certification in 10-RC-162530 and unfair labor practice charges in 10-CA-166500 and 10-CA-169340. Those purported hurdles have been cleared and they no longer preclude the processing of the Petition.<sup>3</sup> As a result, the Stay should be immediately lifted so that Region 10 can resume processing the Petition in this case.

Respectfully submitted, this 9<sup>th</sup> day of May, 2019.

s/ Michael B. Schoenfeld  
Stanford Fagan LLC  
2540 Lakewood Ave. SW  
Atlanta, Georgia 30315  
404-622-0521, ext. 2244  
michaels@sfglawyers.com  
Counsel for Petitioner

---

<sup>3</sup> As argued in its Response in Opposition to Volkswagen's Request for Review and Motion to Stay, Response in Opposition to Volkswagen's Motion to Dismiss, and its Post-Hearing Brief, Petitioner maintains that there is no basis in Board law for dismissal of the instant petition. *See also WTOP*, 114 NLRB 1236, 1237 (1955) (holding that no certification bar existed even though RC petition was filed by the Radio & Television Broadcast Engineers & Technicians, Local No. 1215 less than twelve months after the American Federation of Television and Radio Artists won an election as was certified as the bargaining representative of the same unit, because the American Federation of Television and Radio Artists "disclaimed interest in the unit ... following the filing of the" petition by Local No. 1215); *National By-Products Company*, 122 NLRB 334, 335 (1958) (finding no bar to petition filed by International Brotherhood of Teamsters, Local 452, where union that represented 2 of the 12 employees in the petitioned-for unit disclaimed interest); *Brunswick Hospital Center, Inc.*, Case Nos. 29-CP-437, 29-CP-438 and 29-RC-4846, 1981 WL 26024 at p. \*2 (Advice Memorandum, Feb. 20, 1981) (finding no certification bar where RC petition was filed by Brunswick Nurses Association for a unit of registered nurses within twelve months of Teamsters Local 803's certification as bargaining representative of the same unit, because Teamsters Local 803 disclaimed interest in representing the unit).

**CERTIFICATE OF SERVICE**

I hereby certify that on May 9, 2019, I submitted the foregoing **PETITIONER**  
**INTERNATIONAL UNION, UAW'S MOTION TO LIFT STAY** to the NLRB via e-filing  
with a copy of the same sent by e-mail to the following:

Kerstin Meyers  
Field Attorney  
National Labor Relations Board, Region 10  
Kerstin.meyers@nlrb.gov

Samuel Morris  
Godwin Morris Laurenzi Bloomfield  
Counsel for Local 42  
smorris@gmlblaw.com

Arthur Carter  
Arrissa Meyer  
John Harper, III  
Counsel for the Employer  
ATCarter@littler.com  
AKMeyer@littler.com  
AJHarper@littler.com

s/ Michael B. Schoenfeld

# EXHIBIT 1

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 10**

**VOLKSWAGEN GROUP OF AMERICA**

**and**

**Cases 10-CA-169340 and  
10-CA-166500**

**UNITED AUTO WORKERS LOCAL 42**

**ORDER APPROVING WITHDRAWAL REQUEST,  
DISMISSING COMPLAINT, AND CLOSING CASES**

On May 3, 2019, the National Labor Relations Board remanded these cases to the undersigned for the purpose of approving the Union's request to withdraw the underlying unfair labor practice charges. Having duly considered the Union's request for withdrawal,

IT IS ORDERED that the request to withdraw the charges are approved, the Complaint is dismissed, and the cases are closed.

Dated: May 6, 2019



A handwritten signature in black ink, reading "John D. Doyle, Jr.", with a stylized flourish at the end.

---

JOHN D. DOYLE, JR.  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 10  
233 Peachtree Street, NE  
Harris Tower - Suite 1000  
Atlanta, Georgia 30303-1504

# EXHIBIT 2

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 10**

**Volkswagen Group of America, Inc.**

**Employer**

**and**

**Case 10-RC-162530**

**United Auto Workers, Local 42**

**Petitioner**

**ORDER REVOKING CERTIFICATION**

On December 14, 2015 the Regional Director for Region 10 of the National Labor Relations Board certified United Auto Workers, Local 42 (Union) as the exclusive collective-bargaining representative in the following appropriate bargaining unit of employees of Volkswagen Group of America, Inc. (Employer):

All full-time and regular part-time maintenance employees employed by the Employer at its Chattanooga, Tennessee facility, including Skilled Team Members and Skilled Team Leaders, but excluding Team Members, Team Leaders, specialists, technicians, plant clerical employees, office clerical employees, engineers, purchasing and inventory employees, temporary and casual employees, student employees in the apprenticeship program, all employees employed by contractors, employee leasing companies and/or temporary agencies, all professional employees, managers, guards and supervisors as defined in the Act.

The Employer filed a Request for Review with the Board, which the Board denied on April 13, 2016. The Employer refused to recognize and bargain with the Union, and the Union filed unfair labor practice charges in Cases 10-CA-166500, 10-CA-169340, 10-CA-191620, and 10-CA-209575. In Cases 10-CA-166500 and 10-CA-169340, the Board found that the Employer had violated the Act by refusing to recognize and bargain with the Union. *Volkswagen Group of America, Inc.*, 364 NLRB No. 110 (2016). The Employer appealed this decision to the United States Court of Appeals for the District of Columbia Circuit. While that appeal was pending the Board issued its decision in *PCC Structural, Inc.*, 365 NLRB No. 160 (2017), overruling *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), which was framework the Regional Director and Board had used in this case in determining the appropriateness of the unit. As a result, on December 26, 2017, the D.C. Circuit granted a motion remanding Cases 10-CA-166500 and 10-CA-169340 back to the Board for consideration of the affect of the decision in *PCC Structural, Inc.* on the certification herein.

On April 15, 2019, the Union requested to withdraw the petition in this matter and disclaimed any interest in further representing the employees covered by the above-referenced certification. The Union also requested withdrawal of the charges in Cases 10-CA-166500, 10-CA-169340, 10-CA-191620, and 10-CA-209575. On April 16, 2019, I approved the Union's request to withdraw the charges in Case 10-CA-191620 and 10-CA-209575, which were pending

before me. The General Counsel and the Union moved the Board for dismissal of the complaint in Cases 10-CA-166500 and 10-CA-169340. On May 3, 2019, the Board remanded Cases 10-CA-166500 and 10-CA-169340 to me for the purposes of dismissing the complaint and closing those cases. On May 6, 2019, I issued an order dismissing that complaint and closing those cases.

No evidence has been presented that the Union is acting inconsistently with its disclaimer.<sup>1</sup> As the case is closed, withdrawal of the petition herein as requested by the Union is not appropriate. However, in view of the Union's disclaimer of interest to represent the employees in the above bargaining unit and consistent with Section 11478.3 of the Board's Casehandling Manual for Representation Cases,

**IT IS ORDERED** that the Certification of Representative issued in Case 10-RC-162530 is revoked.

Dated: May 6, 2019



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JOHN D. DOYLE, JR.  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 10  
233 Peachtree St NE  
Harris Tower Suite 1000  
Atlanta, GA 30303-1504

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<sup>1</sup> On April 9, 2019, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) (the International Union) filed a petition in Case 10-RC-239234 seeking to represent the broader production and maintenance unit, which the Employer has maintained throughout proceedings in the instant case was the only appropriate unit. On May 3, 2019, the Board issued an order staying the proceedings in Case 10-RC-239234. The International Union's filing of a petition seeking to represent the production and maintenance unit, which the Employer has maintained throughout is the only appropriate unit, is not inconsistent with the Union's disclaimer of interest in continuing to represent the unit described herein, which the Employer has resisted throughout.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 10**

**Volkswagen Group of America, Inc.**

**Employer**

**and**

**Case 10-RC-162530**

**United Auto Workers, Local 42**

**Petitioner**

**ERRATA**

On May 6, 2019, the undersigned issued in the above-captioned case an Order Revoking Certification. That Order erroneously omitted the following Right to Request Review language that should have been included pursuant with Section 11478.3 of the National Labor Relations Board Casehandling Manual, Part Two, Representation Proceedings.

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by May 21, 2019. The request may be filed electronically through E-Gov on the Agency's website, [www.nlrb.gov](http://www.nlrb.gov), but may not be filed by facsimile.

Dated: May 7, 2019



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JOHN D. DOYLE, JR.  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 10  
233 Peachtree St NE  
Harris Tower Suite 1000  
Atlanta, GA 30303-1504



**From:** [National Labor Relations Board](#)  
**To:** [Ring, John](#)  
**Subject:** RELEASE — NLRB Rulemaking Agenda Announced  
**Date:** Wednesday, May 22, 2019 12:17:15 PM

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## NLRB Rulemaking Agenda Announced



## NLRB Rulemaking Agenda Announced

Washington, DC —The rulemaking priorities of the National Labor Relations Board (NLRB) were released today by the OMB’s Office of Information and Regulatory Affairs. The release, based on a submission prepared at the direction of the Chairman, is included in the Unified Agenda of Federal Regulatory and Deregulatory Actions ([Long Term Actions/Short Term Actions](#)), which issues twice yearly.

The Unified Agenda discloses that the Board—in addition to proceeding with its rulemaking regarding the joint-employer standard—will consider rulemaking in the following areas:

- The Board’s current representation-case procedures.
- The Board’s current standards for blocking charges, voluntary recognition, and the formation of Section 9(a) bargaining relationships in the construction industry.
- The standard for determining whether students who perform services at private colleges or universities in connection with their studies are “employees” within the meaning of Section 2(3) of the National Labor Relations Act (29 U.S.C. Sec. 153(3)).
- Standards for access to an employer’s private property.

“The Agenda reflects the Board majority’s strong interest in continued rulemaking.” said Chairman John F. Ring. “Addressing these important topics through rulemaking allows the Board to consider and issue guidance in a clear and more comprehensive manner.”

The NLRB issued its Notice of Proposed Rulemaking (NPRM) regarding the standard for determining joint-employer on September 14, 2018. The period for public comment closed February 11, 2019, after the Board had received nearly 29,000 comments. “The Board is pleased with the number of comments we received in response to our proposed joint-employer rulemaking and looks forward to considering each one,” Chairman Ring stated. “The number of comments reflects the public’s strong interest in the Board providing greater clarity in this important area of the law.”

Established in 1935, the National Labor Relations Board is an independent federal agency that protects employers and employees from unfair labor practices and protects the right of private sector employees to join together, with or without a union, to improve wages, benefits and working conditions. The NLRB conducts hundreds of workplace elections and investigates thousands of unfair labor practice charges each year.

# # #



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This email was sent to john.ring@nlrb.gov using GovDelivery Communications Cloud on behalf of: National Labor Relations Board  
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**From:** [Lucy, Christine B.](#)  
**To:** [Roberts, Tracey](#)  
**Cc:** [Ring, John](#)  
**Subject:** revised  
**Date:** Wednesday, May 1, 2019 9:59:21 AM  
**Attachments:** (b) (5), (b) (7)(A)

---

Tracey –

(b) (5), (b) (7)(A)

Thanks.

**Christine B. Lucy**

Chief of Staff and Special Counsel to the Chairman  
National Labor Relations Board  
1015 Half Street SE, Office 5100, Washington, DC 20570  
[christine.lucy@nrlrb.gov](mailto:christine.lucy@nrlrb.gov) | 202-273-3914  
(m) 202.701.4804

**From:** [Employment Law360](#)  
**To:** [Ring, John](#)  
**Subject:** Rising Tide Of Leave Laws Has Employers Treading Water  
**Date:** Wednesday, May 8, 2019 4:00:10 AM



## EMPLOYMENT

/a>

Wednesday, May 8, 2019



### TOP NEWS

#### Analysis

#### **Rising Tide Of Leave Laws Has Employers Treading Water**

Employers are struggling with compliance challenges posed by the ongoing proliferation of state and local sick leave mandates, according to a new survey from Littler Mendelson PC.

[Read full article »](#)

#### **Full 10th Circ. Signals It May Scrap Employee Disability Ruling**

At oral arguments before the full Tenth Circuit Tuesday, the court seemed likely to overturn its earlier holding that disabled workers suing their employers under the Americans with Disabilities Act must have been fired or demoted to bring the claims.

[Read full article »](#)

#### **6th Circ. Upholds Ex-Cleveland Cop's Retaliati on Win**

A split Sixth Circuit panel on Tuesday refused to undo a victory for a former police lieutenant who convinced a jury that the city of Cleveland retaliated against him for complaining about racial discrimination to the U.S. Equal Employment Opportunity Commission.

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#### **Murray Energy Rule Stepped On Miners' Rights, DC Circ. Says**

A D.C. Circuit panel affirmed a U.S. Department of Labor order fining Murray Energy \$100,000 for telling workers to alert management to their anonymous Mine Safety and Health Administration complaints, saying it illegally scared miners off from going to the feds.

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#### **US Soccer Says Women Shouldn't Compare Pay To Me n's**

The U.S. Soccer Federation has fired back at a pay discrimination suit filed by the members of the national women's soccer team, arguing that the team is comparing apples to oranges by measuring their pay against the compensation of male players.

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#### **Deloitte Forges Employment Alliance Wi th Epstein Becker**

Deloitte Legal and U.S. law firm Epstein Becker & Green announced Tuesday that they have entered into a strategic alliance under which they will team up on clients' employment law and workplace management matters.

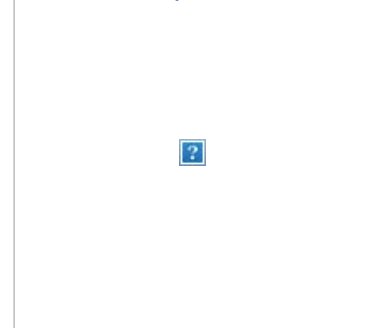
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### DISCRIMINATION

#### **Fiat Says Age Bias Suit Cites Stol en Confidential Documents**

Fiat Chrysler told a Michigan federal judge Monday that a proposed class action alleging the automaker's employee evaluation process discriminates

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[ERISA \(14\)](#)

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against older workers cites confidential documents that were stolen by a former manager who isn't a plaintiff in the case.

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### **Barnes & Noble Must Advance Atty Fees To Ousted CEO**

Barnes & Noble must cough up attorney fees — in advance — for its former chief executive whom the company fired and accused of sexual harassment and sabotage in the CEO's breach of contract and defamation suit, a New York federal judge has ordered.

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### **No 2nd Chance For Atty Malpractice Suit Over 'Meritless' Case**

The New Jersey Appellate Division refused to revive a malpractice suit over a law firm's representation of a nurse in an employment discrimination suit, reasoning Tuesday that the firm's performance was irrelevant because the underlying claims had already been deemed meritless.

[Read full article »](#)

## **WAGE & HOUR**

### **Uber Deal With Drivers 'Dangerously Inadequate,' Judge Says**

A California federal judge has rejected a nearly \$350,000 settlement in a class action alleging Uber denied drivers their fair share of riders' payments, saying in a Tuesday order that the deal is "dangerously inadequate."

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### **LG Accused Of 'Paper Promotions' In OT Suit**

LG Electronics USA Inc. was hit Tuesday in New Jersey federal court with class claims from a manager in its accounts receivable department alleging the electronics giant has engaged in so-called paper promotions to avoid paying salaried employees time and a half for overtime.

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### **Attys Win \$1.1M Fee For Envoy Air Class Settlement**

Regional airline Envoy Air must pay \$1.1 million in attorney fees as part of a \$2.3 million settlement reached with passenger service agents who alleged in a class action that the airline short-shrfted them on meal breaks, overtime and expenses, a California federal judge ordered Tuesday.

[Read full article »](#)

## **LABOR**

### **Greyhound Wrongly Fired Driver After Fiery Talk, NLRB Says**

The National Labor Relations Board has ruled that Greyhound ran afoul of federal labor law when it fired a union steward following a heated confrontation with a manager, rejecting the company's claim that the steward punched the boss and noting that the manager had "fabricated" an injury.

[Read full article »](#)

## **NONCOMPETES**

### **Black Exec Says Railway Let White Workers Skirt Noncompete**

Canadian National Railway Co. passed over a black executive for a promotion in favor of less qualified white candidates and then threatened him with a noncompete agreement that it didn't enforce against white workers after he quit, the ex-manager has alleged in Tennessee federal court.

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## **TRADE SECRETS**

### **EQT To Search Ex-Worker's Phone For Rice Communications**

Kim Cho & Lim  
Latham & Watkins  
LeClairRyan  
Littler Mendelson  
Locks Law Firm  
McDermott Will  
McGuire Law PC  
McGuireWoods  
Miller Canfield  
MoloLamken LLP  
Morrison & Foerster  
Napoli Shkolnik  
O'Melveny & Myers  
Ogletree Deakins  
Paul Weiss  
Pepper Hamilton  
Pitt McGehee  
Podhurst Orseck  
Polsinelli  
Quinn Emanuel  
Rebar Bernstein  
Reed Smith  
Rothman Gordon  
Sauer & Wagner  
Saxena White  
Seeger Weiss  
Seyfarth Shaw  
Shook Hardy  
Terrell Hogan  
The Wilner Firm PA  
Vladeck Raskin  
Wilson Sonsini  
Winston & Strawn  
Wolf Haldenstein

## **COMPANIES**

Altria Group Inc.  
American Airlines Group Inc.  
American Federation of Labor and Congress of Industrial Organizations  
Bank of America Corp.  
Barnes & Noble Inc.  
Bayer AG  
Bayer CropScience Ltd.  
Black Elk Energy LLC  
Bumble Bee Foods LLC  
Burger King Holdings Inc.  
CVS Health Corp.  
Canadian National Railway Company  
Canadian Pacific Railway Limited  
Deloitte Touche

Forensic investigators can examine a former EQT Corp. employee's cellphone for messages and trade secrets he may have exchanged with former Rice Energy executives now fighting to take over EQT's board of directors, after a Pennsylvania federal judge ordered the phone be turned over Tuesday.

[Read full article »](#)

### **Bayer CropScience Says Fired Scientist Stole Trade Secrets**

A fired Bayer CropScience employee shared confidential information with his new employer, which then used those trade secrets to develop competing biopesticide products, the company has claimed in Texas federal court.

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## **WHISTLEBLOWER**

### **DOJ Unveils Cooperation Credit Check list For FCA Targets**

The U.S. Department of Justice on Tuesday delivered eagerly awaited guidance on how False Claims Act targets can receive leniency in exchange for proactively disclosing misconduct, marking the DOJ's latest effort to incentivize corporate cooperation.

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### **Co. Challenges Ex-Mars Lander Whistleblower's \$1.5M Award**

ManTech blasted a \$1.5 million jury verdict awarded to a former NASA Mars mission engineer in a retaliation suit, asking a California federal court to instead hold that the employee failed to prove he was fired for raising concerns about the contractor's use of Lockheed Martin-owned engineering files.

[Read full article »](#)

## **WORKER SAFETY**

### **Coal Cos. Owe \$4.8M Over Mine Safety Issues, Feds Allege**

The federal government on Tuesday hit a host of coal companies associated with West Virginia Gov. Jim Justice and his family with a lawsuit claiming they should have to fork over nearly \$4.8 million in fines for allegedly flouting federal mine safety requirements.

[Read full article »](#)

### **Fraud May Merit New NFL Concussion Rules, Judge Says**

Citing continued concern about potentially fraudulent payouts from the National Football League's massive concussion settlement, the Pennsylvania federal judge overseeing the litigation signaled her support Tuesday for new medical rules that players say would limit their freedom to see doctors of their choosing.

[Read full article »](#)

## **BANKRUPTCY**

### **Luxury Brand Retailer LK Bennett's Ch. 11 Bonuses Approved**

A Delaware bankruptcy judge approved employee bonus plans sought by luxury brand retailer LK Bennett USA Inc. on Tuesday, saying the \$85,000 in payments would incentivize company leaders to maximize value from sales of the debtor's inventory.

[Read full article »](#)

## **WORKER PRIVACY**

### **Chicago Hotel Worker Brings Suit Over Fingerprint Scans**

A Texas-based hotel management company was hit with a lawsuit in Illinois state court over claims that it collects and shares certain employees' fingerprints for timekeeping purposes in violation of the state's biometric privacy law.

[Dollar General Corp.](#)

[Dynamex, Inc.](#)

[EQT Corp.](#)

[FCA US LLC](#)

[Gannett Co. Inc.](#)

[Greyhound Lines Inc.](#)

[JPMorgan Chase & Co.](#)

[Jimmy John's Franchise LLC](#)

[LG Electronics Inc.](#)

[LexisNexis Group](#)

[LinkedIn Corp.](#)

[Lockheed Martin Corp.](#)

[Lyft Inc.](#)

[MF Global Holdings Ltd.](#)

[ManTech International Corporation](#)

[NFL Enterprises LLC](#)

[Platinum Partners LP](#)

[R.J. Reynolds Tobacco Co. Inc.](#)

[Reed Elsevier](#)

[SYSCO Corp.](#)

[Tegna Inc.](#)

[US Foods Inc.](#)

[Uber Technologies Inc.](#)

[United Mine Workers of America](#)

[United States Soccer Federation Inc.](#)

[Wal-Mart Stores Inc.](#)

[Wells Fargo & Co.](#)

[Wilmington Trust Corp.](#)

## **GOVERNMENT AGENCIES**

[California Supreme Court](#)

[Equal Employment Opportunity Commission](#)

[Federal Mine Safety and Health Review Commission](#)

[Federal Trade Commission](#)

[Financial Conduct Authority](#)

[Florida Supreme Court](#)

[Government Accountability Office](#)

[Illinois Supreme Court](#)

[Mine Safety and Health Administration](#)

[National Aeronautics and Space Administration](#)

[National Crime Agency](#)

[National Labor Relations Board](#)

[Securities and Exchange Commission](#)

[Solicitors Regulation Authority](#)

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[U.S. Department of Justice](#)

[U.S. Department of Labor](#)

[United States Bankruptcy Court for the District of Delaware](#)

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## EXPERT ANALYSIS

### Keeping Up With A Changing Worker Classification Landscape

In light of the U.S. Department of Labor's new guidance on worker classification and states' adoption of so-called ABC classification tests, companies operating in multiple states will need to weigh the costs of maintaining workforces composed of both contractors and employees, says Eve Wagner of Sauer & Wagner.

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#### Opinion

### Keep Increasing Pressure Against Noncompetes

Arguments made by defenders of noncompetes are based on old assumptions about labor markets that economists have begun to abandon, says Eric Posner of MoloLamken.

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### 5 Myths In Legal Crisis Communications

Having worked at a boutique law firm, a crisis communications agency and in BigLaw, I have identified a number of common misconceptions across these disparate business models when it comes to crisis and litigation communications, says Robert Gemmill of Hogan Lovells.

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## LEGAL INDUSTRY

### Titan Of The Plaintiffs Bar: Bernstein Litowitz's Hannah Ross

Hannah Ross of Bernstein Litowitz Berger & Grossmann has made a name for herself inking record-setting settlements and recovering billions for vulnerable investors in securities litigation. But the former Massachusetts prosecutor said her drive to fight for victims as a professional dates back to her time staffing domestic violence hotlines and rape crisis centers in college.

[Read full article »](#)

### 2 Law Firms Lead The Pack In Contracts Litigation

Two firms stood out as top players in contracts litigation over the past three years, as a decadelong decline of case filings shows signs of abating, according to a report released Tuesday.

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### UK Law Firms Face Punishment Over AML Failings

The Solicitors Regulation Authority has referred 26 U.K. law firms for disciplinary action after finding they are not doing enough to prevent money laundering, the watchdog said on Tuesday as it warned that some are falling "seriously short" of required standards.

[Read full article »](#)

### White House Orders Former Counsel To Defy House Subpoena

The Trump administration stepped up its opposition on Tuesday to House Democrats' oversight following the release of special counsel Robert Mueller's report on Russian interference in the 2016 presidential election, ordering former White House Counsel Don McGahn not to comply with a committee subpoena.

[Read full article »](#)

### Kilpatrick Townsend Taps Seattle Head As Managing Partner

Kilpatrick Townsend on Tuesday said it has chosen the leader of its Seattle office as its next firmwide managing partner, as the lawyer who most recently held the position becomes its first-ever chief legal officer.

United States District Court for the  
Eastern District of Pennsylvania  
Wage and Hour Division

[Read full article »](#)

### **Gannett's CLO Takes Helm As CEO Retires Amid Takeover Bid**

Gannett's board of directors on Monday appointed its chief legal officer to temporarily replace the retiring president and CEO of the media giant, just over a week before an annual shareholder meeting set to occur amid a takeover bid.

[Read full article »](#)

### **Trial Judge Who Represented Smokers DQ'd From Engle Case**

Cigarette makers R.J. Reynolds and Philip Morris obtained the disqualification of a trial judge in an Engle progeny case in Florida state court Monday based on their fear of bias stemming from his prior representation of plaintiffs in nearly 20 cases against them.

[Read full article »](#)

### **In Reversal, Ex-Platinum Boss Released After Night In Jail**

Former Platinum Partners co-founder Mark Nordlicht was ordered released from custody on Tuesday, a day after the New York federal judge presiding over his securities fraud trial revoked his bond for accosting a prosecutor.

[Read full article »](#)

### **StarKist's Atty Docs Off-Limits In Tuna Price-Fixing MDL**

A California federal court has rejected an attempt to force StarKist to produce communications between the company and its general counsel in a multidistrict litigation over alleged price-fixing in the canned tuna industry.

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**To:** [Ring, John](#)  
**Subject:** Ed Egee Resume  
**Date:** Monday, May 20, 2019 7:17:24 AM  
**Attachments:** [E. Egee Resume.PDF](#)

---

Attached.

***Jo Ann Bashford***

*Confidential Assistant,  
Legal Administrative Specialist  
Office of the Chairman  
National Labor Relations Board  
1015 Half Street, SE  
Washington, DC 20570  
(202) 273-0837  
[joann.bashford@nlr.gov](mailto:joann.bashford@nlr.gov)*

**From:** [Ring, John](#)  
**To:** [Bis, Justin B. EOP/WHO](#)  
**Cc:** [Lucy, Christine B.](#)  
**Subject:** Schedule C - NLRB Office of Congressional and Legislative Affairs  
**Date:** Wednesday, May 22, 2019 4:41:33 PM  
**Attachments:** [E. Egee Resume.PDF](#)

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Justin – Attached is the resume of Ed Egee, who we would like to bring on as a Schedule C in the role of Director of the NLRB's Office of Congressional and Public Affairs. As I mentioned, I wanted you to have the resume in advance of the official paperwork that should be forthcoming. Thanks again.

Regards,

John

**John F. Ring**

Chairman

National Labor Relations Board

1015 Half Street SE Washington, DC 20570

[john.ring@nrlb.gov](mailto:john.ring@nrlb.gov) | 202-273-2722

# Edwin W. Egee, V

(b) (6)

(b) (6)

## In General

- Well-connected policy expert with bipartisan relationships throughout Washington.
- Skilled advocate with extensive experience in legislative and regulatory processes.
- Consensus builder and team player who enjoys working with others.
- Multitasker who thrives in fast-paced environment.
- Strong writer with excellent verbal communication skills.

## Areas of Expertise:

- Labor and Employment
- Retirement
- Health Care
- Corporate Governance

## Work Experience

### Director of Federal Policy

Xerox Corporation, May 2011-Present

- Implemented legislative and regulatory strategies to advance federal policy goals beneficial to Xerox
- Saved Xerox \$220 million over three years through successful lobbying effort on pension reform
- Drove PAC expansion through the development of corporate-wide fundraising solicitation campaign
- Secured passage of legislation stabilizing defined benefit pension funding
- Represented Xerox on a range of trade association boards, including the U.S. Chamber, ERIC, American Benefits Council, Business Roundtable, and National Association of Manufacturers
- Identified specific policy priorities that are consistent with bottom-line objectives for Xerox LOBs
- Provided advice and counsel to senior management, including the Chief Executive Officer
- Chaired the Corporate Health Care Council, a coalition of 18 large, self-insured employers

### Staff Director

U.S. Senate Subcommittee on Employment and Workplace Safety, HELP Committee, February 2005-May 2011, Senator Johnny H. Isakson (R-GA), Chairman/Ranking Member

- Staffed Senator on a wide range of issues, including labor and employment, environment and anti-trust
- Led subcommittee staff and maintained salary and travel budget
- Orchestrated Senate opposition to numerous European-style legislative mandates on employers, including Card Check, Healthy Families Act, FMLA expansion, and Lilly Ledbetter Act
- Coordinated Republican response to Federal Mediation Board actions expanding airline worker unionization
- Successfully fostered bipartisan support for the Ban Asbestos in America Act of 2007 that banned the production, manufacture, and distribution of asbestos; Shielded the stone and gravel industry from pointless litigation
- Twice enacted ERISA reforms that modernized key elements of federal defined benefits pension policy, including provisions targeted at airline industry

- Successfully negotiated first major mine safety legislation in more than two decades; Served as key liaison between mine operators and Bush Administration officials
- Pushed Bush Administration's Labor Department to implement a number of regulatory changes, including reclassification of certain agricultural employees, technical FMLA corrections, and ERISA regulations
- Conducted numerous Subcommittee hearings on pressing employment topics including OSHA reform, Longshore Act modernization, and reintegration of returning Guard and Reservists into the labor force
- Numerous speaking appearances at conferences, chambers of commerce, and events around Washington and the country on workforce, employee benefits, retirement, occupational safety & health, and mine safety policy

### **Professional Staff**

**U.S. Senate Health, Education, Labor, & Pensions Committee**, February 2003-January 2005  
Senator Judd Gregg (R-NH), Chairman

- Staffed Senator on labor and employment issues
- Focused Committee attention on problematic corruption in labor unions and on archaic labor regulations
- Extended anti-corruption enforcement to state and local unions to protect union members from fraud
- Defended Bush Administration efforts to update decades-old white collar overtime regulations
- Achieved confirmation for numerous Bush Administration nominees

### **Special Assistant to the Vice President**

**Labor, Immigration, and Employee Benefits Division**  
**U.S. Chamber of Commerce**, July 1999-February 2003

- Represented Chamber members to Congress and the Executive Branch to advance legislation and regulation, focusing on workplace flexibility, ERISA preemption, and immigration reform
- Organized key coalition of trade associations, businesses, and think tanks aimed at overturning the Clinton Administration ergonomics regulation
- Implemented Chamber-wide program for small employers to identify domestic violence among employees
- Drafted quarterly newsletter to Chamber members on employment issues
- Planned and managed Division budget

### **Education**

#### **B.A. in Political Science**

Magna Cum Laude  
Mary Washington College, Fredericksburg, VA

### **References**

The Honorable Johnny Isakson, U.S. Senator  
Carol McFate, Chief Investment Officer, Xerox Corporation  
The Honorable Brian Hayes, Former Member, National Labor Relations Board  
Randel Johnson, Partner, Seyfarth Shaw

**From:** [Joint Committee on Employee Benefits](#)  
**To:** [Ring, John](#)  
**Subject:** Still Time to Register! Join us in DC for ERISA Basics June 5-7  
**Date:** Thursday, May 23, 2019 2:34:04 PM

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## **ERISA Basics National Institute**

June 5-7, 2019

Jones Day (300 New Jersey Avenue, NW, Washington, DC 20001)

For practitioners who address issues related to employee benefit plans, this 2 1/2-day National Institute will provide an opportunity to hear from the ERISA experts.

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Washington, DC

**Benjamin Eisner**

*Spear Wilderman, PC*  
Philadelphia, PA

**Russell Hirschhorn**

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*Proskauer Rose LLP*  
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Subject: Legal News FYI 05-21-19  
Date: Tuesday, May 21, 2019 8:12:25 AM  
Attachments: [image001.png](#)

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Tuesday, May 21, 2019

### Justices Won't Consider NLRB Jurisdiction at Tribal Casinos

**BloombergLaw - Daily Labor Report** 20 May 2019 09:46

By Robert LaFolla The U.S. Supreme Court declined to wade into a high-stakes jurisdictional battle over labor issues at tribal-owned businesses like casinos and hotels. The justices May 20 kept in place a decision by the U.S. Court of Appeals for the...

### Labor Board General Counsel's Review Of Employer Work Rules A Mixed Bag

**JD Supra Law News** 21 May 2019 07:38

The National Labor Relations Board's (NLRB) General Counsel (GC) has issued an Advice Memorandum on whether unfair labor practice charges alleging four employer rules violated the National Labor Relations Act (NLRA) have merit. In a Memorandum released...

### In a Test of Their Power, #MeToo's Legal Forces Take On the Golden Arches

**New York Times, The (New York, NY)** 21 May 2019 05:00

In 2016, when she was 16, Brittany Hoyos started her first job, at a busy McDonald's in Tucson. Not long after, she said, a manager began harassing her, touching her hair, texting her about her appearance and once making a move to kiss her after...

### CT attorney general gives boost to labor legislation

**Middletown Press (Middletown, CT)** 20 May 2019 17:25

With a new legal opinion, Attorney General William Tong has given a boost to the long campaign by labor to pass "captive audience" legislation, a measure unions say is needed to protect employees from coercion during organizing drives, but business calls...

### New York Steakhouse Broke Labor Law With New Servers

**BloombergLaw - Daily Labor Report** 20 May 2019 16:57

• 36 workers went on strike during bargaining • Employer brought in new workers By Porter Wells A New York steakhouse that brought in new workers while its servers and bartenders were on strike committed unfair labor practices, the D.C. Circuit affirmed...

### High Court Won't Weigh In On NLRB's Power Over Tribal Cos.

**Securities Law360** 20 May 2019 16:41

Law360 (May 20, 2019, 4:35 PM EDT) -- The U.S. Supreme Court on Monday declined to consider whether the National Labor Relations Board has power over tribal employers, rejecting a California casino's challenge to a ruling that it illegally blocked...

### The Legal Argument That Could Destroy Uber

**Jalopnik Blog** 20 May 2019 14:13

Days after Uber began selling stock, the National Labor Relations Board's top lawyer gave the company a huge gift. In an advice memo, the general counsel's office determined that Uber's drivers are independent contractors, not employees. If drivers are...

### UM Law Student Awarded Peggy Browning Fellowship

**Winston County Journal (Louisville, MO)** 20 May 2019 12:50

Gerald Kucia will work in Jackson this summer to advance workers' rights causes OXFORD, Miss. -- Gerald Kucia, a second-year student at the University of Mississippi School of Law, will spend his summer advancing the cause of workers' rights in Jackson...

### Kyle Campbell, 2L, Receives Peggy Browning Fellowship

**Alabama Law Review** 20 May 2019 09:36

The Peggy Browning Fund has awarded a 10-week summer fellowship to Kyle Campbell, a second-year student at The Hugh F. Culverhouse Jr. School of Law. During his fellowship, Campbell will work at Bush Gottlieb in Los Angeles. "I came to law school to be a...



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[Need an overview of the development in NLRB representation \(R-case\) law?](#)

**On Thursday, May 30 at 1 PM Eastern , Terrence G. Schoone-Jongen from the NLRB's Office of Representation Appeals** will review the latest representation case rulings and enforcement initiatives from the NLRB including those you missed in 2018.

Representation petitions filed by employees, unions and employers are the most widely used means of securing (or modifying) representation rights in private sector workplaces. NLRB regional offices investigate petitions to determine if an election should be conducted, the scope of the unit and other issues. If parties do not agree, regional offices hold pre-election hearings to determine these issues and, if necessary, post-election hearings to resolve challenges to voter eligibility and objections to conduct of elections or other conduct affecting the results. Parties can seek Board review of regional determinations, resulting in a dynamic body of representation law. Both experienced R-case practitioners and less experienced labor and employment lawyers will find this CLE Webinar update invaluable in understanding current trends in this important area of labor law.

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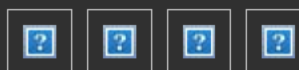
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**Subject:** How Supreme Court Conservatives Have Shaped The FCA  
**Date:** Monday, May 20, 2019 4:00:30 AM



## EMPLOYMENT

Monday, May 20, 2019



### TOP NEWS

#### Analysis

#### **How Supreme Court Conservatives Have Shaped The FCA**

The U.S. Supreme Court's latest False Claims Act ruling didn't just decide how much time whistleblowers have to launch fraud cases — it added to a long line of FCA opinions written by right-leaning justices, who have authored virtually all of the high court's modern FCA precedent.

[Read full article »](#)

#### **House Passes Broad LGBTQ Rights Legislation**

The U.S. House of Representatives on Friday passed a sweeping bill that would prohibit discrimination based on sexual orientation and gender identity in the workplace, as well as several other facets of public life.

[Read full article »](#)

#### **9th Circ. Says Tesla Can Arbitrate Worker's Race Bias Claims**

A black Tesla employee who says he was constantly subjected to racial epithets, harassment and threats at work and then ignored when he complained must pursue his claims in arbitration, the Ninth Circuit ruled Friday, with the chief judge saying the panel's hand was forced by precedent.

[Read full article »](#)

#### **Nurses Were Paid Hourly, Not On Salary, Texas Justices Say**

A Texas hospital never intended to pay four nursing supervisors an annual salary instead of an hourly wage, and therefore didn't short them on income, the state's highest court held Friday.

[Read full article »](#)

#### **Jury Backs Pizza King Mario Sbarro In Steakhouse Wage Suit**

A New York federal jury has found in favor of pizza restaurateur Mario Sbarro and his son in a suit brought by tipped workers for a now-closed steakhouse who claimed the Sbarros failed to pay them minimum and overtime wages as the business struggled to survive.

[Read full article »](#)

#### **Robinson Bradshaw Liable For Diversity Promises, Atty Says**

Law firms should be held liable for deceptive advertising when they lure minority and female attorneys by talking up their diversity and inclusion efforts and then fail to live up to their promises, according to a Thursday filing in a race bias suit against Robinson Bradshaw & Hinson PA.

[Read full article »](#)

### DISCRIMINATION

#### **CSX Aims To Dump Train Manager's Medical Leave Suit**

CSX Transportation Inc. asked a Florida federal judge Friday to dump a suit from a train manager alleging his position was wrongfully eliminated while he was out on disability leave, insisting the manager wasn't singled out.

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## WAGE & HOUR

### Conn. Senate Sends \$15 Minimum Wage Bill To Governor

Connecticut is poised to become the seventh state to adopt a \$15 minimum wage after its Senate approved a wage hike early Friday, sending the plan to Gov. Ned Lamont's desk.

[Read full article »](#)

### NJ Judge Won't Toss Domino's Wage Suit Without Seeing Deal

A New Jersey federal judge on Friday rejected separate bids to toss a proposed class action against a company that operates Domino's Pizza franchises, saying the business must turn over a purported settlement agreement for the court's approval or swear that there is no deal to resolve claims of Fair Labor Standards Act violations.

[Read full article »](#)

### Morgan Stanley's \$10M Deal Is Too Low, Advisers Say

A group of former Morgan Stanley financial advisers urged a California federal judge Thursday to reject a \$10 million deal proposed last month to settle allegations that the investment bank routinely refused to reimburse them for work-related expenses, arguing the amount is too low and the release of claims is too broad.

[Read full article »](#)

## LABOR

### Janus Stops Pa. Union Fee Challenge In Its Tracks

A federal judge closed the book Friday on a group of Pennsylvania public school workers complaining about compulsory union fees, finding that the 2018 U.S. Supreme Court decision declaring the practice unconstitutional made their case moot.

[Read full article »](#)

### Gov't Must Provide Info In Challenge To 2-For-1 Rule Order

The D.C. federal judge presiding over public interest groups' challenge to President Donald Trump's executive order requiring that for every new regulation, two rules must be eliminated, said Friday that federal agencies must do a better job complying with discovery.

[Read full article »](#)

## TRADE SECRETS

### Symrise Accused Of Raiding Refresco To Develop New Drink

Dutch soft-drink company Refresco Beverages U.S. Inc. has sued flavoring and fragrance maker Symrise Inc. in New Jersey federal court, alleging it is conspiring with former Refresco executives and researchers to develop a new soft drink for a competitor using its resources and trade secrets.

[Read full article »](#)

## WHISTLEBLOWER

### Texas Judge Backs Broad DOJ Authority To End FCA Suits

A Texas federal judge on Thursday recommended the dismissal of False Claims Act suits accusing Eli Lilly and Bayer of providing kickbacks to doctors in the form of various assistance services, saying the U.S. Department of Justice has "virtually unfettered" dismissal authority in whistleblower FCA cases.

[Read full article »](#)

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April guidance from the U.S. Department of Justice on corporate compliance programs serves as a reminder of the value of coordination among a company's human resources, legal and compliance functions, say Steven Pearlman and Pinchos Goldberg of Proskauer.

[Read full article »](#)

### **Inside The New FCA Cooperation Credit Guidelines**

The recently issued U.S. Department of Justice cooperation credit guidelines provide False Claims Act litigators important information about factors the government considers before awarding cooperation credit or moving to intervene and dismiss a qui tam relator's suit, say attorneys at Cleary.

[Read full article »](#)

### **Q&A**

#### **A Chat With Gilead Sciences Legal Ops Leader Gary Tully**

In this monthly series, legal recruiting experts from Major Lindsey & Africa interview legal industry leaders about the increasingly competitive business environment. Here, Rod Osborne talks with Gary Tully, head of legal operations at Gilead Sciences.

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## **LEGAL INDUSTRY**

### **Titan Of The Plaintiffs Bar: Caldwell Cassady's Brad Caldwell**

If Apple could send people back in time, it would likely make them steer Brad Caldwell away from law school. It probably wouldn't have even been that hard: He'd studied to be an engineer, even worked as one for the CIA, before applying for law school on a whim. There was a very real future in which he didn't become a lawyer, and in that future, Apple might have kept the \$1 billion Caldwell bled from it in court.

[Read full article »](#)

### **4 Blunders Law Firms Make On Social Media**

Social media presents law firms with ample opportunity to build their reputation and attract the attention of new clients, but all too often firms end up stumbling in their online marketing strategies, falling face first into social media mediocrity.

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### **Thousands Of Calif. Attys In Trouble Over Fingerprints**

Over 6,200 attorneys in California face escalating penalties this month for missing a deadline to submit new fingerprints to the State Bar in an unpopular push to discover attorneys convicted of crimes.

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### **The Law Firms Making Millions Off The PG&E Cases**

The nation's largest utility company, Pacific Gas and Electric, has paid at least \$89 million in the past year in legal fees to firms directly involved with its bankruptcy, civil, criminal and regulatory cases stemming from California wildfires — and the vast majority of that sum has gone to Cravath Swaine & Moore LLP.

[Read full article »](#)

### **Group Got \$17M Secret Donation Ahead Of Kavanaugh Fight**

The Judicial Crisis Network received \$17 million from an anonymous donor shortly before the fight to confirm Justice Brett Kavanaugh, according to two government watchdog groups that obtained the conservative judicial group's latest tax returns.

[Read full article »](#)

### **Analysis**

#### **Constitutional Crisis? Not Quite, But Courts Could Be Tested**

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### **GOVERNMENT AGENCIES**

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Legal and political scholars agree we are not in a constitutional crisis ... yet. But as tensions mount between the president and Congress, the role of the third branch of government could be both crucial and perilous.

[Read full article »](#)

### **FEC Chair Rips Peers For Nixing Thornton Donation Inquiry**

The Federal Election Commission came up two votes shy of moving forward with an investigation into whether Boston-based Thornton Law illegally reimbursed partners for campaign donations, frustrating the commission's chair who worried that FEC inaction could spawn more unlawful activity.

[Read full article »](#)

### **Pierce Bainbridge Ends Partnership With Funder Pravati**

Litigation boutique Pierce Bainbridge has concluded its partnership with litigation funder Pravati Capital, whose investment helped fuel the young firm's rapid national expansion over the past two years, the parties confirmed Friday.

[Read full article »](#)

### **Helping Manafort's Kid Get Skadden Gig No Crime, Craig Says**

Former Skadden partner Gregory Craig urged a D.C. federal court Friday to bar the government from introducing evidence that he helped line up a job at Skadden for the daughter of the now-jailed former chairman of the Trump campaign, Paul Manafort.

[Read full article »](#)

### **Top NJ Federal Judge Bemoans Court's Workload Upon Exit**

New Jersey's federal court system outpaced all other district courts in civil case filings over the past year, further burdening a short-staffed bench that's riddled with six vacancies, U.S. District Judge Jose L. Linares said Friday in announcing his departure for private practice.

[Read full article »](#)

### **ABA Raises Bar For Law School Accreditation On Third Vote**

The American Bar Association on Friday adopted a new standard requiring ABA-accredited law schools to show that at least 75% of graduates pass the bar exam within two years of getting their diplomas, a tightened standard that the organization had rejected twice before.

[Read full article »](#)

### **GC Cheat Sheet: The Hottest Corporate News Of The Week**

General counsel said they think legal operations departments might make lasting progress on diversity and inclusion where others so far haven't succeeded, and the Federal Trade Commission said it's cracking down on companies that buy consumer data gathered through scammers. These are some of the stories in legal news you may have missed in the past week.

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### **In Case You Missed It: Hottest Firms And Stories On Law360**

For those who missed out, here's a look back at the law firms, stories and expert analyses that generated the most buzz on Law360 last week.

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#### **Podcast**

### **Law360's Pro Say: Kavanaugh V. Gorsuch**

President Donald Trump's two U.S. Supreme Court appointees have found themselves at odds in a surprising number of cases, most recently in a big ruling this week backing iPhone owners who want to sue Apple. Reporter Jimmy Hoover joins us on the Pro Say podcast to discuss the Apple case and the rift between the court's newest justices.

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KLR Davis  
New York, New York

**Enforcement Attorney**

U.S. Securities & Exchange Commission  
Philadelphia, Pennsylvania

**Assistant Counsel II, Talent - The Estée  
Lauder Companies**

The Estee Lauder Companies  
New York, New York

**mid level L&E assoc/40 yr old 50 atty NYC  
firm**

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**To:** [Ring John](#)  
**Subject:** The Best Law Firms For Female Attorneys  
**Date:** Tuesday, May 28, 2019 4:04:34 AM



## EMPLOYMENT

Tuesday, May 28, 2019



### GLASS CEILING REPORT

#### The Best Law Firms For Female Attorneys

While the latest Glass Ceiling Report again shows marginal gains for women in private practice, some firms are demonstrably forging a path to parity for female attorneys. Here are the law firms leading the way.

[Read full article »](#)

#### Glass Ceiling Slow To Break For Female Attys In 2018

Our latest survey of the largest U.S. law firms shows the barriers to equality for women increase as they rise up the ranks. Here's our breakdown of the data from this year's Glass Ceiling Report.

[Read full article »](#)

#### What 12 Gender Bias Complaints Say About BigLaw

Law360 looks at a dozen gender bias suits against law firms to see where their complaints dovetail — and where they veer apart. Together, the suits offer a window into the top gender equity hurdles facing the legal industry.

[Read full article »](#)

### TOP NEWS

#### Women Fight To Stay Anonymous In Jones Day Sex Bias Suit

Four anonymous former Jones Day associates involved in a proposed class action accusing the firm of rampant bias against women are trying to turn the legal giant's secrecy against it, citing the firm's success sealing a different discrimination suit as support for their bid to keep withholding their names.

[Read full article »](#)

#### DOL Contractor Watchdog Eyeing Religious Liberty Rule

The Office of Federal Contract Compliance Programs has indicated it will update its stance on religiously affiliated organizations, a move experts say could result in federal contractors getting more leeway to claim they are exempt from certain workplace anti-discrimination requirements, like those that protect LGBT workers.

[Read full article »](#)

#### Robinson Bradshaw Calls Atty Claims In Bias Suit 'Outlandish'

Robinson Bradshaw & Hinson PA fired back Thursday against a black female attorney's court filing accusing the law firm of using racial stereotypes in its efforts to escape her bias suit against it, saying the attorney "caustically embellishes the most outlandish allegations of her complaint."

[Read full article »](#)

#### 3rd Circ. Won't Resuscitate EMS Worker's FMLA Case

The Third Circuit refused to revive a suit claiming an emergency medical services provider flouted the Family and Medical Leave Act when it fired a worker while she was on medical leave, saying she was axed after refusing to answer questions about whether she violated a noncompete agreement.

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### Law360 Pro Say Podcast



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### New Cases

[Discrimination \(78\)](#)

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### **BofA, McGuireWoods Fire Back At Sanctions Bid In OT Suit**

Bank of America NA and attorneys at McGuireWoods LLP have hit back against a bid for sanctions in a proposed overtime class action, saying the Bank of America employees bringing the suit were wrong to claim the company has failed to comply with discovery orders.

[Read full article »](#)

## **DISCRIMINATION**

### **3rd. Circ. Title VII Ruling Kills Worker's Gay Bias Suit**

A Pennsylvania federal judge has dismissed a suit filed by a gay aluminum manufacturing worker who claims he was mistreated because of his sexual orientation, citing a nearly two-decade-old Third Circuit precedent that doesn't allow sexual orientation claims to be brought under Title VII of the Civil Rights Act.

[Read full article »](#)

### **Xerox Gets Gay Ex-Worker's Title VII Suit Thrown Out**

A Texas federal judge has let Xerox slip a gay former worker's discrimination suit claiming he was axed because he didn't conform to traditional male stereotypes, saying a federal workplace discrimination law does not prohibit bias based on sexual orientation.

[Read full article »](#)

### **Discover Dodges Bulk Of Ex-Manager's Disability Bias Suit**

Discover Products Inc. can escape claims that it failed to accommodate a former senior manager's disabilities before firing her, but will have to face allegations that the company discriminated against her based on age and gender, an Illinois federal judge said Friday.

[Read full article »](#)

### **Baltimore County Pursues High Court Say On ADEA Back Pay**

Baltimore County has defended its request that the U.S. Supreme Court overturn a Fourth Circuit ruling that employers who violate the Age Discrimination in Employment Act must give their workers back pay, arguing that federal judges have the right to decide whether back pay is required after a violation.

[Read full article »](#)

### **NJ Rape Suit's Secrecy Challenge Moved To Appeals Court**

A New Jersey judge agreed Friday to transfer claims in a state housing official's rape lawsuit claiming the Garden State's confidentiality rule for workplace investigations hurts harassment victims, reasoning that challenges to agency actions belong in the appeals court, not a trial court.

[Read full article »](#)

## **WAGE & HOUR**

### **NCAA Rips \$45M Atty Fee Bid In Student Athlete Pay Suit**

The \$45 million attorney fee bid from the legal team whose March victory barred the NCAA from restricting student athletes' education-related compensation is unreasonable because it seeks pay for "excessive, redundant, and unnecessary" hours worked, the NCAA said in California federal court Friday.

[Read full article »](#)

### **GrubHub Says 9th Circ. Take On Dynamex Can't Help Driver**

A recent Ninth Circuit ruling that the California Supreme Court's Dynamex decision making it harder for businesses to classify their workers as independent contractors applies retroactively isn't relevant to a former GrubHub driver's wage suit, GrubHub has told the appeals court, arguing the company couldn't have predicted the "sweeping change" in the law.

Constangy Brooks  
Covington & Burling  
Cowles & Thompson  
Cravath Swaine  
Crowe & Dunlevy  
Culhane Meadows  
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Davis Graham  
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Fredrikson & Byron  
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Hoagland Longo  
Hogan Lovells  
Holland & Knight  
Hughes Hubbard  
Husch Blackwell  
Jackson Kelly  
Jackson Lewis  
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Jomarron Lopez  
Jones Day  
Katz Marshall  
Kelley Drye  
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Klein Law Group  
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Kramer Levin  
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Levin Sedran  
Lichten & Liss-Riordan  
Liebert Cassidy  
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### **Amazon Gets Suit Over Manager Classifications Trimmed**

A California federal judge on Friday trimmed a former Amazon manager's putative class action accusing the retail giant of misclassifying certain managers as exempt, cheating them out of overtime pay and breaks, finding Amazon had successfully shown his primary value to the company was as a manager.

[Read full article »](#)

### **Eversource Fined \$250K In Mass. For Wage-And-Hour Issues**

The Massachusetts Attorney General's Office slapped Eversource Energy Service Co. with a \$250,000 fine, alleging the company had underpaid its employees.

[Read full article »](#)

## **LABOR**

### **Browning-Ferris Doesn't Want NLRB Member Kicked Off Case**

National Labor Relations Board member William Emanuel should be allowed to weigh in on the board's joint-employer test in a case on remand from the D.C. Circuit, Browning-Ferris argued, since it wasn't clear his former law firm represented a party in the case as the Teamsters claimed.

[Read full article »](#)

### **Data Co. Worker Fired For Workload Complaint Gets Job Back**

The National Labor Relations Board has ordered an Ohio data security company to rehire an engineer it fired after he said it should have used an executive's pay to bring on more workers, saying the company's explanation for canning him rings false.

[Read full article »](#)

## **BENEFITS**

### **Trump Sinks ACA Protections In Latest Transgender Setback**

The Trump administration moved Friday to eliminate an Affordable Care Act anti-discrimination policy covering transgender patients, reversing an Obama administration stand and adding to a series of civil rights rollbacks for transgender Americans.

[Read full article »](#)

## **WHISTLEBLOWER**

### **\$4.5M SEC Whistleblower Award 1st To Stem From Internal Tip**

The U.S. Securities and Exchange Commission said Friday that it has handed out a first-of-its-kind \$4.5 million award to a whistleblower who raised concerns internally with a company and also alerted regulators, ultimately leading to two enforcement actions after the company looked into the allegations and self-reported.

[Read full article »](#)

### **SpaceX Whistleblower Can't Relaunch \$6M Retaliation Suit**

An avionics technician can't revive claims he was wrongfully fired for questioning SpaceX's testing methods, a California appellate court has ruled, finding that none of his dozens of challenges to the trial court's evidentiary hearings had any merit or warranted changing a jury's verdict.

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### **Bank Of Internet Execs Beat Suit Over Whistleblower Probe**

A California federal judge tossed a shareholder's derivative suit accusing Bank of Internet executives of misconduct that led to a costly internal investigation into a whistleblower's allegations of shady business dealings,

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ruling Thursday that the investor failed to show that the directors were culpable.

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## WORKER SAFETY

### Seeger Stands Alone: 5 Firms Tossed From NFL Settlement

In a move that came as a surprise and left many attorneys furious, the federal judge overseeing the NFL's landmark concussion settlement terminated all of the deal's leading lawyers except Chris Seeger on Friday, heightening long-simmering tensions between Seeger and his fellow attorneys and plunging the contentious case into uncharted waters.

[Read full article »](#)

## WARN ACT

### Pa. Direct Mail Co. Faces WARN Act Suit Over Sudden Firings

Direct mail company North American Communications Inc. failed to give advance notice to more than 250 employees it fired when it closed its headquarters on May 20 and now owes them two months of pay, according to a proposed class action filed Thursday in Pennsylvania federal court.

[Read full article »](#)

## PEOPLE

### Winston & Strawn ERISA Partner Joins Jenner & Block

An employment and benefits attorney who spent his whole career at Winston & Strawn LLP has made the jump to Jenner & Block LLP, where he will bring nearly three decades of litigation experience to the firm's Chicago office as a partner in the ERISA litigation group.

[Read full article »](#)

### Lone Star Laterals: Crowe & Dunlevy, Husch Blackwell

In our latest roundup of Texas partners on the move, Crowe & Dunlevy PC added a trio of partners in Dallas, Husch Blackwell LLP picked up an appellate partner in Houston and Barnes & Thornburg LLP added a former in-house counsel for an asset management firm to its corporate group.

[Read full article »](#)

## EXPERT ANALYSIS

### The True Definition Of A Whistleblower Claim

Whistleblower is often misused as a generic term, but it actually has a specific meaning with specific implications that companies must understand when crafting programs to handle both actual and purported whistleblower complaints, says Neil Rosolinsky, deputy general counsel at Citizens Financial Group.

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### What Antitrust Attys Need To Know About Labor Monopsony

Economists for a long time assumed that labor markets are competitive and do not pose any problems for antitrust law. But new research has shown that this assumption is wildly inaccurate, says Eric Posner of MoloLamken.

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### Real-Life Lessons For Lawyers From 'Game Of Thrones'

What lessons can the various hands, maesters, council members and other advisers in "Game of Thrones" impart to real-life lawyers? Quite a few, if we assume that the Model Rules of Professional Conduct were adopted by the Seven Kingdoms, says Edward Reich of Dentons.

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The Gardner Firm PC  
The Law Offices of Neal Brickman  
Thompson Coe  
Tyson & Mendes  
Van Kampen Law PC  
Van Ness Feldman  
Vinson & Elkins  
Walsworth  
Weinberg Gonser  
White & Case  
Wiley Rein  
Wilkinson Walsh  
Willkie Farr  
WilmerHale  
Wilson Turner  
Winston & Strawn  
Wong Fleming  
ZwillGen PLLC

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AdvoCare International LP  
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Amazon.com Inc.  
America's Essential Hospitals  
American Bar Association  
American Civil Liberties Union  
Apple Inc.  
Bank of America Corp.  
Bayer AG  
Baylor University  
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BuzzFeed Inc.  
Caterpillar Inc.  
Citizens Financial Group Inc.  
Coca-Cola Bottling Co.  
Consolidated  
Columbia Sportswear Co.  
Dynamex, Inc.  
Equinox Holdings Inc.  
Eversource Energy  
Facebook  
Farmers Insurance Group  
Gilead Sciences Inc.  
Google Inc.  
GrubHub Inc.  
Hobby Lobby Stores  
Honeywell International Inc.  
Hudson Advisors LLC  
Intel Corp.  
International Bar Association  
International Brotherhood of Teamsters  
Jimmy John's Franchise LLC



## 5 Tips To Help Your Summer Associates Succeed

There are a number of ways that attorneys can ensure their summer associates successfully manage critical writing assignments and new types of professional interactions, says Julie Schrager of Schiff Hardin.

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## LEGAL INDUSTRY

### 3 Ways Law Firms Can Fight Back Against Bullying

Whether it's an attorney screaming at underlings, hurling insults at colleagues or cracking cruel jokes, bullying at law firms is exceedingly common, according to a newly released survey. But firms can take action to combat such behavior and create workplaces centered around respect. Here's how.

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#### Feature

### In-House Attorneys Reflect On A Year With GDPR

By the time the European Union's sweeping data protections took effect last year, in-house attorneys were already in the thick of trying to mitigate the risk for companies. Now, lawyers from heavyweights like Uber, Intel and Honeywell are sharing lessons from the past 365 days and their expectations for the future.

[Read full article »](#)

### Virus Sends Philly Attys Back To Pre-Digital Dark Ages

A virus that has knocked computer systems offline in Pennsylvania's busiest court system over the past week is sowing confusion in judicial proceedings and forcing attorneys in the City of Brotherly Love to hearken back to the days before e-filing.

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#### Analysis

### Meet The Attorneys Facing Off In The Oklahoma Opioid Trial

A landmark trial over the pharmaceutical industry's responsibility for the opioid crisis is about to get underway in Oklahoma, and it will give some of the Sooner State's sharpest legal minds a chance to showcase their skills by either opposing or working with BigLaw partners in front of a national audience.

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### Target In Ex-BigLaw Atty's Defamation Suit Wants Case Moved

The former Equinox employee accused of smearing an ex-Hughes Hubbard partner has argued that the defamation suit filed against him in New York state court in Manhattan belongs in Brooklyn, where there are multiple cases related to purported misconduct at the gym already pending.

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### GC Cheat Sheet: The Hottest Corporate News Of The Week

In-house counsel in the U.S. saw an average salary bump of 4.4% in 2018 compared to 2017, ransomware attacks targeting bigger companies have surged this year, and a task force said legal employers should credit attorneys for their diversity efforts. These are some of the stories in corporate legal news you may have missed in the past week.

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### In Case You Missed It: Hottest Firms And Stories On Law360

For those who missed out, here's a look back at the law firms, stories and expert analyses that generated the most buzz on Law360 last week.

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PG&E Corp.

PricewaterhouseCoopers

Purdue Pharma LP

QUALCOMM Inc.

Sapa AB

Space Exploration Technologies Corp.

Spotify Technology SA

Teva Pharmaceutical Industries Ltd.

Twitter Inc.

Uber Technologies Inc.

Washington Post Co.

Xerox Corp.

## GOVERNMENT AGENCIES

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Choctaw Nation of Oklahoma

Equal Employment Opportunity Commission

European Union

Federal Trade Commission

Food and Drug Administration

Library of Congress

Massachusetts Attorney General's Office

National Labor Relations Board

New Jersey Supreme Court

Office of Federal Contract Compliance Programs

Office of the Comptroller of the Currency

Securities and Exchange Commission

Texas Workforce Commission

U.S. Census Bureau

U.S. Department of Health and Human Services

U.S. Department of Justice

U.S. Department of Labor

U.S. Supreme Court

## Law360's Pro Say: The Freewheelin' John Roberts

Have you ever wondered what Chief Justice John Roberts thinks about amicus briefs? What about his penchant for including Bob Dylan lyrics in his opinions? This week the Pro Say team went to Washington, D.C., for the Burton Awards, which recognize excellence in the law, and we share with you highlights of Justice Roberts' remarks, as well as interviews with Burton honorees Second Circuit Chief Judge Robert Katzmann, Oracle general counsel Dorian Daley and 3M general counsel Ivan Fong.

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New York, New York

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Keesal, Young & Logan  
San Francisco, California

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U.S. Securities & Exchange Commission  
Washington, District of Columbia

#### **Employment Litigation Associate**

Ogletree Deakins Law Firm  
Washington, District of Columbia

#### **Part-time Employment Law Litigation Attorney**

Simpson, Garrity, Innes & Jacuzzi APC  
South San Francisco, California

#### **Attorney**

U.S. Securities & Exchange Commission  
Washington, District of Columbia

#### **Experienced Employment Associate**

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Portland, Oregon

#### **Associate Litigation Attorney (2-4 yrs.)**

Gordon & Rees  
Wilmington, Delaware

#### **Attorney Adviser**

U.S. Securities & Exchange Commission  
Washington, District of Columbia

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KLR Davis  
White Plains, New York

#### **Employment Litigation Defense Attorney**

Kaufman Dolowich & Voluck, LLP  
Los Angeles, California

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**Subject:** Third Circuit decision in Midland Electrical Contracting Corp., Board Case 29-CA-144562 (reported at 365 NLRB No. 87)  
**Date:** Wednesday, May 29, 2019 6:22:59 PM  
**Attachments:** [Midland Electrical\\_17\\_2497\\_Brief.pdf.pdf](#)

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In an unpublished opinion that issued on Tuesday, May 28, 2019, the Third Circuit enforced the Board's order issued against this New Jersey electrical contractor whose employees are represented by United Electrical Workers of America, IUJAT, Local 363. The Board (Members Pearce and McFerran, Chairman Miscimarra dissenting) found that the employer violated Section 8(a)(5), (a)(1), and (d) of the Act by failing to adhere to a collective-bargaining agreement between the union and the Building Industry Electrical Contractors Association, which had negotiated the agreement on behalf of its member-employers. The Board determined that the employer was bound by the collective-bargaining agreement as an association member after having executed an association membership agreement, and had failed to timely withdraw from the association under the terms of the membership agreement.

Before the court, the employer argued only that it had timely withdrawn from the association and therefore was not bound by the collective-bargaining agreement. On that narrow issue, the court held that the two independent bases upon which the Board had rejected that contention were consistent with law and the record evidence. First, the court agreed that the employer was bound by the agreement because it failed to withdraw from the association prior to the start of negotiations for a successor agreement, but the court also recognized that the employer had forfeited the argument before the Board. Second, the court held that the employer had not complied with the applicable withdrawal provisions of its membership agreement that provided for a 90-day notice period prior to contract expiration. In doing so, the court rejected the employer's contention that the 60-day notice period of the collective-bargaining agreement instead controlled its withdrawal, stating that "[w]ithdrawal from a multiemployer bargaining association is distinct from terminating a [collective-bargaining agreement]."

The court's unpublished opinion is [here](#), and the Board's brief to the court is attached.

Nos. 17-2497, 17-2930

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**UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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**NATIONAL LABOR RELATIONS BOARD**

**Respondent/Cross-Petitioner**

**v.**

**MIDLAND ELECTRICAL CONTRACTING CORP.**

**Petitioner/Cross-Respondent**

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**ON PETITION FOR REVIEW AND CROSS-APPLICATION  
FOR ENFORCEMENT OF AN ORDER OF  
THE NATIONAL LABOR RELATIONS BOARD**

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**BRIEF FOR  
THE NATIONAL LABOR RELATIONS BOARD**

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## **TABLE OF CONTENTS**

<b>Headings</b>	<b>Page(s)</b>
Jurisdictional statement.....	1
Statement of the issue .....	2
Statement of related cases .....	2
Statement of the case.....	3
I. The Board’s findings of fact .....	3
A. Background: Midland, the Union, and the Association .....	3
B. Midland designates the Association as its bargaining representative and assumes the 2008-2011 Union-Association CBA .....	4
C. Midland attempts to repudiate the 2011-2014 CBA .....	6
D. The Union and the Association begin negotiating the 2014-2017 CBA; Midland purports to terminate the Assumption Agreement and reject future CBAs .....	8
II. The Board’s Conclusions and Order.....	8
Standard of review .....	10
Summary of argument.....	10
Argument.....	12
Substantial evidence supports the Board’s finding that Midland violated Section 8(a)(5), (a)(1), and (d) by failing to adhere to a CBA to which it was bound.....	12
A. Members of multiemployer bargaining associations are bound by all CBAs the Association executes until they lawfully withdraw their membership .....	13

## **TABLE OF CONTENTS**

<b>Headings-Cont'd</b>	<b>Page(s)</b>
A. Midland's withdrawal was untimely because CBA negotiations between the Association and the Union had already begun .....	15
B. Midland's withdrawal was untimely under the express terms of the membership application.....	21
Conclusion .....	26

## **TABLE OF AUTHORITIES**

<b>Cases</b>	<b>Page(s)</b>
<i>Acropolis Painting &amp; Decorating</i> , 272 NLRB 150 (1984) .....	18
<i>Charles D. Bonanno Linen Svc., Inc. v. NLRB</i> , 454 U.S. 404 (1982).....	10
<i>Chemical Workers v. Pittsburgh Plate Glass Co.</i> , 404 U.S. 157 (1971).....	20
<i>Citizens Publ’g &amp; Printing Co. v. NLRB</i> , 263 F.3d 224 (3d Cir. 2001) .....	10
<i>Ford Motor Co. v. NLRB</i> , 441 U.S. 488 (1979).....	10
<i>Grane Health Care v. NLRB</i> , 712 F.3d 145 (3d Cir. 2013) .....	20
<i>Holsum de Puerto Rico, Inc.</i> , 344 NLRB 694 (2005), <i>enforced</i> , 456 F.3d 265 (1st Cir. 2006).....	17
<i>Metro. Edison Co. v. NLRB</i> , 460 U.S. 693 (1983).....	12
<i>NLRB v. FES, a Div. of Thermo Power</i> , 301 F.3d 83 (3d Cir. 2002) .....	16
<i>NLRB v. Marine Mach. Works</i> , 635 F.2d 522 (5th Cir. 1981) .....	14
<i>NLRB v. Truck Drivers Local Union No. 449</i> , 353 U.S. 87 (1957).....	13
<i>Oldwick Materials, Inc. v. NLRB</i> , 732 F.2d 339 (3d Cir. 1984) .....	16

## **TABLE OF AUTHORITIES**

<b>Cases-Cont'd</b>	<b>Page(s)</b>
<i>Parkwood Developmental Ctr., Inc. v. NLRB</i> , 521 F.3d 404 (D.C. Cir. 2008).....	16
<i>Quick v. NLRB</i> , 245 F.3d 231 (3d Cir. 2001) .....	10
<i>Retail Assocs., Inc.</i> , 120 NLRB 388 (1958) .....	13, 14, 15, 17, 18, 19, 20, 21
<i>Rome Electrical Systems</i> , 349 NLRB 745 (2007), <i>enforced</i> , 286 F. App'x 697 (11th Cir. 2008).....	23, 24
<i>S. Freedman Elec.</i> , 256 NLRB 432 (1981), <i>enforced mem.</i> , 679 F.2d 873 (2d Cir. 1981) .....	14
<i>Sheet Metal Workers Local 19 v. Herre Bros.</i> , 201 F.3d 231 (3d Cir. 1999) .....	13, 14
<i>Unique Art Mfg. Co.</i> , 83 NLRB 1250 (1949) .....	22
<i>United States v. Pelullo</i> , 399 F.3d 197 (3d Cir. 2005) .....	17
<i>Universal Camera Corp. v. NLRB</i> , 340 U.S. 474 (1951).....	10
<i>Woelke &amp; Romero Framing</i> , 456 U.S. 645 (1982).....	16

## **TABLE OF AUTHORITIES**

### **Statutes:**

### **Page(s)**

National Labor Relations Act, as amended  
(29 U.S.C. § 151 et seq.)

Section 7 (29 U.S.C. § 157) .....	9
Section 8(a)(1) (29 U.S.C. § 158(a)(1)).....	2, 3, 8, 10, 12
Section 8(a)(5) (29 U.S.C. § 158(a)(5)).....	2, 3, 8, 10, 12
Section 8(d) (29 U.S.C. § 158(d)).....	2, 3, 8, 10, 12
Section 9(a) (29 U.S.C. § 159(a)) .....	5, 20
Section 10(a) (29 U.S.C. § 160(a)) .....	2
Section 10(e) (29 U.S.C. § 160(e)) .....	2, 10, 15, 16, 17
Section 10(f) (29 U.S.C. § 160(f)) .....	2

### **Regulations**

29 C.F.R. § 102.46 .....	16
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**UNITED STATES COURT OF APPEALS  
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**Nos. 17-2497, 17-2930**

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**NATIONAL LABOR RELATIONS BOARD**

**Respondent/Cross-Petitioner**

**v.**

**MIDLAND ELECTRICAL CONTRACTING CORP.**

**Petitioner/Cross-Respondent**

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**ON APPLICATION FOR ENFORCEMENT AND  
CROSS-PETITION FOR REVIEW OF AN ORDER OF  
THE NATIONAL LABOR RELATIONS BOARD**

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**BRIEF FOR  
THE NATIONAL LABOR RELATIONS BOARD**

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**JURISDICTIONAL STATEMENT**

This case is before the Court on the application of the National Labor Relations Board for enforcement, and the cross-petition of Midland Electrical Contracting Corporation (Midland) for review, of a Board Order issued against Midland on June 6, 2017, reported at 365 NLRB No. 87. (JA 3-17.)<sup>1</sup> The Board

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<sup>1</sup> “JA” references are to the joint appendix. References preceding a semicolon are to the Board’s findings; those following are to supporting evidence.



had subject-matter jurisdiction under Section 10(a) of the National Labor Relations Act (the Act) (29 U.S.C. § 160(a)), which authorizes the Board to prevent unfair labor practices affecting commerce.

This Court has jurisdiction over this appeal because the Board's Order is final under Section 10(e) and (f) of the Act (29 U.S.C. § 160(e) and (f)). Venue is proper under Section 10(e) and (f) because Midland is headquartered and transacts business in New Jersey. The Board's application and Midland's cross-petition were timely, as the Act places no time limit on the institution of proceedings to enforce or review Board orders.

### **STATEMENT OF THE ISSUE**

Whether substantial evidence supports the Board's finding that Midland violated Section 8(a)(5), (a)(1), and (d) of the Act by failing to adhere to a collective-bargaining agreement (CBA) to which it was bound.

### **STATEMENT OF RELATED CASES**

*Trustees of the Building Trades Educational Benefit Fund et al. v. Midland Electrical Contracting Corp.*, No. 2:15-cv-04872-JFB-ARL, is currently pending in the Southern District of New York. To Board counsel's knowledge, that case involves an action by affected benefit funds to recover missed contributions from Midland stemming from Midland's repudiation of the CBA at issue here, and is currently stayed pending the outcome of this case.

## **STATEMENT OF THE CASE**

Following charges filed by the United Electrical Workers of America, IUJAT, Local 363 (the Union), the Board's General Counsel issued a complaint alleging that Midland violated Section 8(a)(5), (a)(1), and (d) of the Act by failing to adhere to a CBA between the Union and the Building Industry Electrical Contractors Association (the Association), which was effective December 1, 2014, through November 30, 2017. After a hearing, an administrative law judge found that Midland was bound to that CBA as a member of the Association, which had negotiated the CBA on behalf of its members. The judge further rejected Midland's argument that it had timely withdrawn in September 2014 from the Association and from future Union-Association CBAs and, therefore, found that Midland had violated the Act as alleged. (JA 11-17.) After considering Midland's exceptions, the Board adopted the judge's findings. (JA 1-5.) The Board's findings, conclusions, and Order are described below.

### **I. THE BOARD'S FINDINGS OF FACT**

#### **A. Background: Midland, the Union, and the Association**

Midland is an electrical contractor, and the Union is a labor organization representing electrical workers. The Association is a multiemployer association of electrical contractors that negotiates CBAs with the Union on behalf of its members. The Association and the Union had a CBA covering a unit of

electricians, electrical maintenance workers, helpers, apprentices, and trainees employed by the Association's members in effect from December 1, 2008, through November 20, 2011. (JA 12; 47-48.)

In the spring of 2010, Midland contacted the Union to discuss its employees joining the Union and obtaining coverage under that CBA. Midland informed the Union that it was interested in obtaining work under project-labor agreements with the New York City School Construction Authority, which had historically been performed by employees in a different union. The Union stated that it was considering filing a lawsuit to become eligible to perform such work, but that it had not yet done so. (JA 12; 52.)

**B. Midland Designates the Association as Its Bargaining Representative and Assumes the 2008-2011 Union-Association CBA**

On June 30, 2010, Midland signed the Membership Application, under which Midland became a member of the Association and expressly designated the Association to represent it in negotiations with the Union, agreeing "to be bound by all the terms of any agreement entered into between the Association and [the Union] . . . with the same force and effect as though [Midland] had executed the agreement as a party." (JA 1, 12; 239.) The Membership Application specifies that "[r]esignation from the Association must be in writing and served on the

Association by certified mail no less than 90 days prior to the day of the expiration of the agreement between the Association and [the Union].” (JA 1, 12; 240.)

Thereafter, the Union, Midland, and the Association signed the Assumption Agreement, under which Midland assumed the 2008-2011 CBA already in place between the Union and the Association. The Assumption Agreement states that the Union requested recognition and that Midland “hereby recognizes the Union as the majority Section 9(a) [29 U.S.C. § 159(a)] representative under the Act.”<sup>2</sup> (JA 3, 13; 227-28.) It further provides that Midland is bound to the Association’s CBA with the Union, and to associated benefit-fund agreements. Finally, the Assumption Agreement states that “the Association shall, on behalf of [Midland], negotiate successor [CBAs], amendments, renewals and extensions,” and that Midland “agrees to be bound by any and all amendments, renewals and/or extensions of the above referenced Association [CBAs] unless and until this Agreement is properly terminated by either [Midland] or the Union in accordance

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<sup>2</sup> Under Section 9(a) of the Act, representatives designated by a majority of employees in a unit “shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining.” 29 U.S.C. § 9(a). Midland and the Union also signed a Recognition Agreement, which explicitly states that “the Union has presented to [Midland] evidence that it represents a majority” of Midland’s employees and that Midland “has satisfied itself” that the Union represents such a majority and recognizes the Union “as the sole and exclusive collective bargaining agent for all employees of [Midland]” in the relevant unit. (JA 10-11; 231.)

with the renewal and/or Termination Provisions of the Association [CBA].” (JA 3, 13; 227-28.)

Midland adhered to the 2008-2011 CBA for the remainder of that agreement’s term. On November 30, 2011, the Association and the Union executed a successor CBA, effective through November 30, 2014. Article 38 of the 2011-2014 CBA provided that the agreement “shall remain and continue in full force and effect . . . from year to year thereafter, unless either party gives written notice to the other by certified mail, return receipt requested, at least sixty (60) days prior to the date of expiration of this Agreement, that it desires to modify or amend and/or re-negotiate same.” (JA 3, 11; 175, 196-97.) Employers bound to the 2011-2014 CBA were obligated to deduct dues from each unit employee’s paycheck and remit those dues to the Union. The CBA also required contributions to employee benefit funds, including the Security Fund, the Building Trades’ Welfare Benefit Fund, the Building Trades’ Annuity Fund, the Building Trades’ Education Fund, and the Electricians’ Retirement Fund. (JA 11; 178, 186-93.)

### **C. Midland Attempts To Repudiate the 2011-2014 CBA**

On January 17, 2013, Midland sent the Union a letter stating that Midland “need[s] to opt out of the Union” because the Union had not become eligible to perform work under the project labor agreements as Midland had hoped. The letter further stated that “as of January 31, 2013, [Midland] and all of its employees will

no longer be members of [the Union.]" (JA 13; 233.) The Union replied that it would not release Midland from its collective-bargaining obligations, and that Midland would remain bound to the CBA until at least the CBA's expiration date of November 30, 2014, as well as "for any additional time that [Midland] may be bound by any successor agreement." (JA 13; 234.)

In early 2013, Midland called the Union several times, asserting that Midland could not afford to operate without work under project labor agreements. The Union referred Midland to the Association. (JA 14; 145-46). On March 29, Midland emailed the Association and requested, without elaboration or explanation, a copy of "the Building Industry Electrical Contractors Association agreement." (JA 14; 119-20, 269.) In response, the Association mailed Midland a copy of the 2011-2014 CBA. (JA 14; 120-26, 269.)

In May 2013, Midland filed a lawsuit against the Union and the Association seeking to nullify the 2011-2014 CBA on the grounds of fraudulent inducement and breach of contract, based on the Union's failure to become eligible to perform work under project labor agreements. The parties stipulated to dismissal of the lawsuit with prejudice on October 1, and it was dismissed shortly thereafter. (JA 14; 241-67.) Midland continued to adhere to the 2011-2014 CBA. (JA 3-4; 63.)

**D. The Union and the Association Begin Negotiating the 2014-2017 CBA; Midland Purports To Terminate the Assumption Agreement and Reject Future CBAs**

In August 2014, the Union and the Association began negotiations for a successor agreement to the 2011-2014 CBA. On September 4, Midland sent both entities a letter by certified mail stating that, under Article 38 of that CBA, as incorporated in the Assumption Agreement, Midland desired to withdraw from the Assumption Agreement and would not be bound to subsequent CBAs. Midland sent a follow-up letter on September 16, enclosing the September 4 letter, because it had not received any acknowledgement that the Union had received the September 4 letter. (JA 4; 235-38.)

On November 30, the Association and the Union executed a memorandum of agreement extending the 2011-2014 CBA with modifications through November 30, 2017. (JA 4, 14; 199-200.) Since September 2014, Midland has not made fund payments due under either the 2011-2014 or 2014-2017 CBAs. (JA 4, 15; 32-34.)

**II. THE BOARD'S CONCLUSIONS AND ORDER**

The Board (Members Pearce and McFerran; Chairman Miscimarra, dissenting) adopted the judge's finding that Midland failed to withdraw from the Association in a timely manner and therefore violated Section 8(a)(5), (a)(1), and (d) of the Act by failing to adhere to the 2014-2017 CBA.

To remedy that violation, the Board ordered Midland to cease and desist from refusing to bargain collectively with the Union by: (1) withdrawing authorization from the Association to represent it in negotiations with the Union at a time when Midland is obligated to bargain through the Association; (2) refusing to abide by and honor the CBA negotiated by the Association at a time when the Association represents Midland or Midland has agreed to be bound; and (3) refusing, since September 2014, to make contractually required benefit-fund payments to the Union's Security Fund, the Building Trades' Welfare Benefit, Annuity, and Education Funds, and the Electricians' Retirement Fund. It further ordered Midland to cease and desist from, in any like or related manner, interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act (29 U.S.C. § 157).

In addition, the Board ordered Midland to: (1) notify the Association and the Union that Midland continues to authorize the Association to represent it in collective bargaining until that authorization is withdrawn in accordance with the terms of the Membership Application; (2) make bargaining-unit employees whole for any loss of earnings or other benefits suffered as a result of its failure to adhere to the Union-Association CBAs; (3) reimburse the affected funds for missed contributions since September 2014; and (4) post a remedial notice. (JA 6-7.)



## STANDARD OF REVIEW

The Board’s findings of fact are conclusive if supported by substantial evidence. *See* 29 U.S.C. § 160(e); *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951). “The Board’s factual inferences are not to be disturbed, even if the Court would have made a contrary determination had the matter been before it *de novo*.” *Universal Camera*, 340 U.S. at 488; *Citizens Publ’g & Printing Co. v. NLRB*, 263 F.3d 224, 232 (3d Cir. 2001). The Board’s legal conclusions must be upheld if based on a “reasonably defensible” construction of the Act. *Quick v. NLRB*, 245 F.3d 231, 240-41 (3d Cir. 2001) (quoting *Ford Motor Co. v. NLRB*, 441 U.S. 488, 497 (1979)). In particular, courts give great deference to Board rules in areas of the Board’s expertise, including “ground rules for multiemployer bargaining,” which involve “precisely the type of judgment that . . . should be left to the Board.” *Charles D. Bonanno Linen Svc., Inc. v. NLRB*, 454 U.S. 404, 413 (1982).

## SUMMARY OF ARGUMENT

Substantial evidence supports the Board’s finding that Midland was bound to the 2014-2017 CBA and thus violated Section 8(a)(5), (a)(1), and (d) of the Act by failing to comply with that agreement. Employers are bound to any CBAs reached between a multiemployer association and a union while the employer is a member of that multiemployer association. Here, it is undisputed that Midland

lawfully joined the Association in 2010 and that the Association and the Union executed the 2014-2017 CBA. Midland was thus bound by that CBA unless it timely withdrew from the Association, and the Board reasonably found, for two independent reasons, that Midland's attempted withdrawal was untimely.

First, Midland's withdrawal was untimely because Union-Association negotiations had already started. Midland neither disputes that its withdrawal came after negotiations began nor challenges the Board's well-settled principle that such withdrawals are untimely absent mutual consent or unusual circumstances. Instead, it contends that the Union and the Association consented to its late withdrawal and that its previous conduct gave both entities notice that it intended to withdraw. However, this Court lacks jurisdiction to consider those arguments, because Midland did not raise them to the Board. In any event, the Board reasonably rejected Midland's defenses. Notably, there is no record evidence that the Union or the Association consented to allow late withdrawal; the Assumption Agreement, on which Midland relies, does not mention membership in, or withdrawal from, the Association at all.

Second, Midland's withdrawal was untimely because it did not comport with the Membership Application's 90-day-notice requirement. The Board reasonably concluded that the Assumption Agreement did not abrogate that requirement. Although an agreement can supersede a previous agreement if the two agreements

completely cover the same subject matter, the Assumption Agreement covers assumption of the 2008-2011 CBA, whereas the Membership Application covers Association membership. Contrary to Midland’s assertions, moreover, there is no record evidence that the Association told Midland that the Membership Application’s 90-day-notice requirement did not apply.

## **ARGUMENT**

### **SUBSTANTIAL EVIDENCE SUPPORTS THE BOARD’S FINDING THAT MIDLAND VIOLATED SECTION 8(a)(5), (a)(1), AND (d) BY FAILING TO ADHERE TO A CBA TO WHICH IT WAS BOUND**

Section 8(d) of the Act defines the duty to bargain collectively as the performance of the mutual obligation “to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement . . . .” 29 U.S.C. § 158(d).

Section 8(a)(5) of the Act makes it an unfair labor practice for an employer “to refuse to bargain collectively with the representatives of his employees . . . .” 29 U.S.C. § 158(a)(5). Such refusals to bargain also violate Section 8(a)(1) of the Act, which proscribes employer interference with, restraint, or coercion in employees’ exercise of their statutory rights. 29 U.S.C. § 158(a)(1); *see Metro. Edison Co. v. NLRB*, 460 U.S. 693, 698 n.4 (1983).

**A. Members of Multiemployer Bargaining Associations Are Bound By All CBAs the Association Executes Until They Lawfully Withdraw Their Membership**

The Board, with the Supreme Court's approval, has long recognized that employers may pool their resources and increase their bargaining strength by authorizing an association to bargain with a union and execute CBAs on their behalf. *See NLRB v. Truck Drivers Local Union No. 449*, 353 U.S. 87, 94-95 (1957). An employer member of such a multiemployer bargaining association is bound to comply with any contract negotiated by the association. *See Sheet Metal Workers Local 19 v. Herre Bros.*, 201 F.3d 231, 244 (3d Cir. 1999).

Multiemployer bargaining is "a vital factor in the effectuation of the national policy of promoting labor peace through strengthened collective bargaining." *Truck Drivers*, 353 U.S. at 95. But multiemployer bargaining units "can be afforded the sanction of the Board only insofar as they rest in principle on a relatively stable foundation." *Retail Assocs., Inc.*, 120 NLRB 388, 394 (1958).

In order to promote the requisite stability, the Board has established "reasonable controls . . . as to the time and manner that withdrawal will be permitted from an established multiemployer bargaining unit." *Id.* As an initial matter, once negotiations involving an existing multiemployer unit have begun, an employer may not abandon the negotiations or withdraw from the multiemployer unit absent mutual consent or unusual circumstances. *Id.* at 394; *see also Herre*

*Bros.*, 201 F.3d at 244. “Prohibiting such withdrawals contributes to the stability of multiemployer units and prevents the use of the scope of the bargaining unit as a bargaining lever to secure an economic advantage for one side over the other.” *Id.* (quoting *NLRB v. Marine Mach. Works*, 635 F.2d 522, 524 (5th Cir. 1981)). Moreover, regardless of whether negotiations have started, an employer’s withdrawal from multiemployer bargaining must be otherwise timely to be effective. *S. Freedman Elec.*, 256 NLRB 432, 434 (1981) (internal quotation marks omitted), *enforced mem.*, 679 F.2d 873 (2d Cir. 1981). Specifically, for a withdrawal to be timely, it must be “upon adequate notice before the date set by the contract” or “the agreed-upon date to begin the multiemployer negotiations.” *Retail Associates*, 120 NLRB at 395.

Here, it is undisputed that Midland lawfully joined the Association, that the Association and the Union agreed to the 2014-2017 CBA, and that Midland refused to adhere to that CBA. The only remaining issue is whether Midland established that it timely withdrew from the Association. The Board found that Midland’s withdrawal was untimely for two independent reasons: first, Midland withdrew after CBA negotiations had begun, and second, Midland failed to comply with the Membership Application’s requirement that withdrawal be effectuated 90 days before the 2011-2014 CBA’s expiration. Because substantial evidence

supports each of those findings, the Board is entitled to enforcement of its finding that Midland's failure to adhere to the 2014-2017 CBA violated the Act.

**B. Midland's Withdrawal Was Untimely Because CBA Negotiations Between the Association and the Union Had Already Begun**

It is undisputed that negotiations for the extension to the 2011-2014 CBA began in early August 2014, a month before Midland notified the Association and the Union that it intended to withdraw from the Association. As the Board found (JA 5), Midland's attempted withdrawal was thus untimely under *Retail Associates*, and ineffective to terminate Midland's delegation of bargaining authority to the Association. In its opening brief, Midland contends for the first time (Br. 18-20) that its withdrawal from the Association was timely under exceptions to the *Retail Associates* rule because, it claims, the parties consented in the Assumption Agreement to allow withdrawal after negotiations began and because its January 13, 2013 letter, May 2014 lawsuit, and subsequent correspondence with the Union provided actual notice of its intent to withdraw from the Association. As demonstrated below, this Court is barred from considering Midland's belated contentions, which are, in any event, meritless.

Under Section 10(e) of the Act, the Court lacks jurisdiction to consider arguments not raised to the Board. 29 U.S.C. § 160(e) ("No objection that has not been urged before the Board . . . shall be considered by the court, unless the failure . . . to urge such objection shall be excused because of extraordinary

circumstances”); *Woelke & Romero Framing*, 456 U.S. 645, 665 (1982) (stating Section 10(e) of the Act precludes court of appeals from reviewing claim not raised to Board). To satisfy Section 10(e), moreover, a party must raise its objections in the time and manner required by the Board. *See Parkwood Developmental Ctr., Inc. v. NLRB*, 521 F.3d 404, 410 (D.C. Cir. 2008).

To preserve an argument before the Board, the Board’s rules require that an exception to an administrative law judge’s decision contain “the questions of procedure, fact, law, or policy to which exception is taken.” 29 C.F.R. § 102.46. Thus, a party cannot preserve a particular issue by filing generalized exceptions to an administrative law judge’s rulings. *See NLRB v. FES, a Div. of Thermo Power*, 301 F.3d 83, 89 (3d Cir. 2002) (challenge to judge’s factual findings and inferences regarding a conversation insufficient to preserve separate argument that the conversation did not serve as evidence of anti-union animus). Nor does a dissenting Board member’s discussion of an issue “excuse [a party] from its statutory obligation under § 10(e) to file exceptions presenting and preserving its argument to the Board.” *Oldwick Materials, Inc. v. NLRB*, 732 F.2d 339, 343 (3d Cir. 1984).

As the Board found, “[a]lthough [Midland] generally excepted to the judge’s findings, it ma[de] no supporting argument in its brief as to why the judge’s finding [that the withdrawal notices were untimely because CBA negotiations had

begun] should be overturned.” (JA 5.) Midland’s sole exception states that “[t]he [judge’s] determination that [Midland] is bound to the 2014-2017 [CBA] between [the Union] and [the Association] is erroneous,” and its accompanying brief mentions neither *Retail Associates* nor the timing of negotiations. (Midland Exceptions, p. ii-8.) The Board therefore applied its well-established policy of adopting a judge’s unchallenged findings.<sup>3</sup> See *Holsum de Puerto Rico, Inc.*, 344 NLRB 694, 694 n.1 (2005), *enforced*, 456 F.3d 265 (1st Cir. 2006).

Before the Court, Midland neither challenges the finding that it did not preserve its *Retail Associates* argument before the Board nor contends that extraordinary circumstances within the meaning of Section 10(e) excuse its failure to do so. (Br. 18-20.) Because “an appellant’s failure to identify or argue an issue in his opening brief constitutes waiver of that issue on appeal,” Midland has now waived any such contentions. *United States v. Pelullo*, 399 F.3d 197, 222 (3d Cir. 2005). Accordingly, the Court cannot consider Midland’s challenges to the Board’s finding that the ongoing multiemployer negotiations precluded Midland’s attempt to withdraw from the Association in September 2014.

In any event, even if the Court were to reach the merits of that finding, the Board reasonably found that there is no record evidence that either the Association

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<sup>3</sup> The Board majority did also reject, on the merits, the dissent’s challenge to the *Retail Associates* finding, but only after making clear that Midland had waived any such challenge.



or the Union consented to allow Midland to withdraw before negotiations began. (JA 5.) First, Midland’s reliance (Br. 18) on the Assumption Agreement is unavailing. That agreement, in tandem with the CBA, requires only 60-day notice for terminating the CBA. But it does not address Midland’s ability to withdraw from Association membership, as discussed in more detail below (pp. 22-24). Notably, as the Board found, the Assumption Agreement mentions neither withdrawal from membership in the Association nor negotiations. Moreover, Midland cites no authority for the proposition that a contractually valid termination of a CBA is sufficient on its own to override the rule in *Retail Associates*, and the Board has allowed withdrawal under such circumstances only when the CBA explicitly addresses withdrawal from *negotiations*. See *Acropolis Painting & Decorating*, 272 NLRB 150, 150 (1984) (company lawfully withdrew from multiemployer bargaining unit where the CBA “provided an agreed-upon means for withdrawing not only from the [CBA] itself but also from ‘any negotiations regarding [the CBA]’”). The Assumption Agreement thus falls far short of demonstrating “mutual consent” within the meaning of *Retail Associates* to withdrawal during ongoing multiemployer negotiations.

Second, contrary to Midland’s contention (Br. 19-20), its various attempts in 2013 and 2014 to terminate its obligations under the 2011-2014 CBA were also insufficient to warrant an exception to the *Retail Associates* rule. As an initial

matter, Midland has not cited any authority in support of the proposition that notice to the Association of Midland's desire or intention to withdraw from membership would constitute such "unusual circumstances." (Br. 19-20.) The contractual requirements for withdrawal under both the Membership Application and the CBA as incorporated in the Assumption Agreement included written notice served by certified mail. Midland does not explain why lesser notice would suffice to accomplish withdrawal, much less extraordinary withdrawal after the commencement of Union-Association negotiations.

Even if informal notice were sufficient to override *Retail Associates*, Midland's January 2013 letter to the Union did not put the Association on notice that Midland wished to withdraw from the Association when the 2011-2014 CBA expired, much less "comport with the clear requirements set forth in the Membership Application" for withdrawing. (JA 16.) The letter was never sent to the Association, did not mention the Association, and stated not that Midland intended to terminate membership or its CBA obligations at the end of the CBA term, but that Midland wished to "opt out of the Union" as of January 31, 2013. (JA 233.) To the extent Midland meant for the letter to repudiate the 2011-2014 CBA before the CBA expired, such mid-term repudiation is unlawful and was

specifically rejected by the Union in its response to the letter.<sup>4</sup> Moreover, read literally, Midland’s letter was also invalid because an employer cannot “opt out” of its employees’ right to be represented by the union of their choice.<sup>5</sup>

Nor did Midland’s 2013 lawsuit and “numerous representations and correspondences” (Br. 19) establish an exception to *Retail Associates*. As the Board found (JA 16), the lawsuit asked the court to nullify the 2011-2014 CBA, not Midland’s membership in the Association, and did not reference future bargaining by the Association on Midland’s behalf. And the correspondences Midland cites were, like the January 2013 letters, exchanged exclusively with the Union, not the Association, and referred only to Midland’s desire to “get[] out of the Union.” (JA 146.) Accordingly, the lawsuit and subsequent correspondence cannot constitute clear and unequivocal notice that Midland intended to withdraw from membership in the Association.

In sum, as the Board found, Midland’s September 2014 “withdrawal notices were untimely” under the *Retail Associates* requirement that withdrawal occur

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<sup>4</sup> “[A]n employer’s mid-term modification of [contractual] benefits constitutes an unfair labor practice.” *Chemical Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 159 n.2 (1971) (citing cases).

<sup>5</sup> Although an employer may withdraw recognition from a union under some circumstances, such withdrawal is always unlawful during the first three years of a collective-bargaining agreement, and, in the case of a Section 9(a) bargaining-relationship, unlawful at all other times absent “proof of loss of majority support.” *Grane Health Care v. NLRB*, 712 F.3d 145, 151 n.5 (3d Cir. 2013).

before negotiations begin. (JA 4.) That untimeliness finding is dispositive regardless of whether the notices otherwise satisfied the parties' contractual requirements for withdrawal, and the Board's application of *Retail Associates* cannot be challenged for the first time on appeal.

**C. Midland's Withdrawal Was Untimely Under the Express Terms of the Membership Application**

Even disregarding the ongoing negotiations, Midland's attempted withdrawal was ineffective because it was contractually untimely. Midland joined the Association by signing the Membership Application and, as the Board found, "the unambiguous terms of the Membership Application barred [Midland] from resigning its membership in the Association during the final 90 days of any CBA between the Association and the Union." (JA 5.) The 2011-2014 CBA expired on November 30, 2014, and 90 days before that date is September 1, 2014. But Midland did not send its withdrawal letters until September 5 and 16. Therefore, its withdrawal was indisputably untimely under the Membership Application. Indeed, Midland does not contest that point. It solely argues (Br. 10-17) that the subsequent Assumption Agreement modified or superseded the Membership Application under the contract-merger principle. The Board reasonably rejected that argument.

A contract supersedes a prior contract between the same parties if the agreements "completely cover[] the same subject matter," but contain inconsistent

terms. *Unique Art Mfg. Co.*, 83 NLRB 1250, 1251 (1949). The Board reasonably concluded that the Assumption Agreement did not modify the Membership Application because the two agreements do not completely cover the same subject matter. The June 2010 Membership Application solely involves Midland’s membership in the Association, and binds Midland only to the results of *future* negotiations conducted on its behalf.<sup>6</sup> The Assumption Agreement, on the other hand, focuses on Midland’s CBA obligations. When the parties signed the Assumption Agreement, it bound Midland to the then-current 2008-2011 CBA, which had been negotiated before Midland conferred bargaining authority on the Association, and to any extensions or modifications to the 2008-2011 CBA.

Midland’s statement that it “would not have otherwise executed the Assumption Agreement if it was already bound to the 2011-2014 CBA” (Br. 11) thus ignores the Assumption Agreement’s primary purpose of binding it to the 2008-2011 CBA. And it ignores that, even in the absence of the Assumption Agreement, Midland would have been bound to the 2011-2014 CBA as a member of the Association after having signed the Membership Application. Although the Assumption Agreement reiterates that the Association will bargain on behalf of Midland, it does not directly refer to the subject of the Membership Application—

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<sup>6</sup> Accordingly, it is irrelevant that the Union did not sign the Membership Agreement. As the Board explained (JA 6 n.6), multiemployer associations do not need unions’ permission to add members.

Midland's membership in the Association—and says nothing about Midland's withdrawal from the Association. In those circumstances, the Board reasonably treated the two agreements as covering different subjects.

Indeed, in *Rome Electrical Systems*, 349 NLRB 745 (2007), *enforced*, 286 F. App'x 697 (11th Cir. 2008), the Board confronted a similar situation and reached the same conclusion. There, the employer and the union executed a letter of assent under which the employer assumed an existing CBA and authorized the multiemployer association to bargain with the union on the employer's behalf. To cancel that authorization and withdraw from association membership, the letter explicitly required the employer to notify both the association and the union at least 150 days in advance of any CBA's expiration. Thereafter, the association and the union executed a successor CBA stating that an employer that, having withdrawn from the association, "desir[ed] to change or terminate this Agreement must provide written notification at least 90 days prior to the expiration date of the Agreement or any anniversary date occurring thereafter." *Id.* at 745. The Board held that the two agreements covered different subject matters; the letter of assent covered the employer's withdrawal from the multiemployer association and the CBA provision covered its own termination. Because the two agreements did not cover the same subject matter, the letter of assent's 150-day-notice requirement for withdrawing membership remained in effect. *Id.* at 747-49. Similarly, here, the

Assumption Agreement deals with terminating the CBA, and the Membership Application governs withdrawal from the Association.<sup>7</sup>

In addition to finding that the requirements for contractual merger were not met, the Board found that reading the Assumption Agreement as an abrogation of the Membership Agreement would lead to illogical results. First, the Assumption Agreement and the CBA require only that Midland notify the Union, not the Association, before terminating the CBA. If that procedure sufficed to simultaneously terminate Midland's membership in the Association, Midland could leave the Association without even notifying the Association. Second, if the parties wished to modify a contract they had signed just 1 month before, "they likely would have done so in an explicit manner, not by 'the insertion of one phrase with no further elaboration.'" (JA 4, quoting *Rome Electrical*, 349 NLRB at 748.)

The record does not support Midland's contention that the Association itself "confirmed that Midland was solely required to follow the termination provision in the CBA." (Br. 17.) Midland only requested that the Association provide a copy of the "Building Industry Electrical Contractors Association agreement," without

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<sup>7</sup> For that reason, it is immaterial whether, as Midland asserts (Br. 15), the CBA provision in *Rome Electrical*, unlike here, established who could provide notice of CBA termination, but not how to do so. It is also factually inaccurate: the CBA provision in *Rome Electrical* established both who could invoke it (employers who had withdrawn from the association) and how (by giving 90 days' notice).

further elaboration as to why Midland wanted it. (JA 269.) The Association reasonably interpreted Midland's request as a request for a copy of the extant CBA, and sent the CBA to Midland. The Association's president testified that the Association's members frequently requested copies of the CBA, which stands to reason: the CBA dictated wages and other terms of employment for those members' employees. (JA 120.) Notably, the Membership Application does not have the word "agreement" in the title, but the CBA does.

Thus, the Association's failure to send the Membership Application to Midland indicates nothing other than that the Association had no reason to believe that Midland wanted that document. Midland never asked for a copy of the Membership Application or an explanation of how to withdraw from the Association and, as the Board found, "[t]here is no evidence that [Midland] failed to receive a copy of the Membership Application, which it, in fact, executed and then forwarded to [the Association]." (JA 16.) The Association never stated or implied that Midland could withdraw from membership by terminating the CBA.



## CONCLUSION

As set forth above, Midland indisputably attempted to withdraw from the Association both after negotiations had begun and without following the Membership Application's termination provision; each of those facts independently renders the withdrawal untimely and ineffective. The Court lacks jurisdiction to consider Midland's challenge to the untimeliness finding based on ongoing negotiations, which is thus dispositive. Even if the Court reaches the merits of this case, the Board reasonably rejected Midland's argument that the Assumption Agreement, which does not mention withdrawal from the Association, constitutes consent to withdraw during negotiations *and* supersedes the Membership Application. The Board therefore respectfully requests that the Court deny the Company's petitions for review and enforce the Board's Order in full.

Respectfully submitted,

/s/ Kira Dellinger Vol

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*Supervisory Attorney*

/s/ David Casserly

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National Labor Relations Board

March 2018

**UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

NATIONAL LABOR RELATIONS BOARD	)	
	)	
Petitioner/Cross-Respondent	)	
	)	Nos. 17-2497, 17-2930
v.	)	
	)	Board Case Nos.
MIDLAND ELECTRICAL CONTRACTING	)	29-CA-144562
CORP.	)	29-CA-144584
	)	
Respondent/Cross-Petitioner	)	

**CERTIFICATE OF COMPLIANCE**

In accordance with Third Circuit L.A.R. 28.3(d) and 46.1(e), Board counsel David Casserly certifies that he is a member in good standing of the State Bar of Pennsylvania. He is not required to be a member of this Court's bar, as he is representing the federal government in this case.

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its brief contains 5,727 words of proportionally-spaced, 14-point type, and the word processing system used was Microsoft Word 2010. Board counsel further certifies that: the electronic version of the Board's brief filed with the Court in PDF form is identical to the hard copy of the brief that has been filed with the Court and served on opposing counsel; and the PDF file submitted to the Court has

been scanned for viruses using Symantec Endpoint Protection version 12.1.6 and is virus-free according to that program.

s/Linda Dreeben  
Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570-0001  
(202) 273-2960

Dated at Washington, DC  
this 15th day of March, 2018

**UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

NATIONAL LABOR RELATIONS BOARD	)	
	)	
Petitioner/Cross-Respondent	)	
	)	Nos. 17-2497, 17-2930
v.	)	
	)	Board Case Nos.
MIDLAND ELECTRICAL CONTRACTING	)	29-CA-144562
CORP.	)	29-CA-144584
	)	
Respondent/Cross-Petitioner	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on March 15, 2018, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system. I further certify that the foregoing document was served on all those parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not by serving a true and correct copy at the addresses listed below:

Ronald E. Steinvurzel, Esq.  
Steinvurzel & Levy  
34 South Broadway, Suite 210  
White Plains, NY 10601

/s/Linda Dreeben  
Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street, SE  
Washington, DC 20570

Dated at Washington, DC  
this 15th day of March, 2018

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## **Opiates and Work Injury: Lessons on the Ground**

**Thursday, May 23 at 11am PT / 2pm ET**

**A PWA web call, hosted by National COSH**

- Learn about efforts from around the country that are confronting work-induced opiate addiction and overdose with a focus on prevention
- Hear directly from workers and unions who have been part of these efforts as they share their stories and experiences
- Discuss ways to maximize our collective impact and promote shared resources to stem this epidemic

*with special presenters:*

**Jodi Sugerman-Brozan**, Executive Director, MassCOSH;  
**Patricia Moore**, Chemical Dependency Counselor, Cincinnati Veterans Affairs  
Media Center; Safety Officer, AFGE;  
**Jonathan Rosen**, Industrial Hygienist

**Please use this link to register:** [tinyurl.com/COSH-Opioids-Work-Injury](https://tinyurl.com/COSH-Opioids-Work-Injury)

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## EMPLOYMENT

Wednesday, May 15, 2019



### TOP NEWS



#### Uber Drivers Can't Unionize, NLRB Advice Memo Says

Uber drivers are independent contractors who aren't eligible to unionize, the National Labor Relations Board said Tuesday, marking the second time in less than a month that the Trump administration has declared gig economy workers aren't "employees" under federal workplace law.

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#### #MeToo Raises Stakes On Efforts To Root Out Wage Gaps

Nearly two years after the Harvey Weinstein scandal galvanized the #MeToo movement and pushed the issue of sexual misconduct into the national spotlight, experts say the movement is now increasingly fueling efforts to draw attention to gender-based pay inequity. Here, Law360 looks at five things employers can do to find and fix illegal wage disparities between women and men.

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#### 7th Circ. Leery Of Reviving Worker's Suit Over Obesity Firing

The Seventh Circuit on Tuesday appeared hesitant to revive a former Chicago Transit Authority employee's Americans with Disabilities Act lawsuit claiming he was fired for his obesity, saying the standard for determining

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disability in the case was unclear.

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### House Lawmakers Float Pregnant Worker Accommodation Bill

A bipartisan group of House lawmakers led by Reps. Bobby Scott, D-Va., and Jerrold Nadler, D-N.Y., unveiled legislation on Tuesday that would require businesses to make reasonable job adjustments for pregnant employees to help them do their jobs.

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## DISCRIMINATION

### Ex-Consol Prez Denied Wage Claims But Pursues Retaliation

The first female president of Consol Energy can pursue claims that she was fired in retaliation for complaining about differences between her male co-workers' pay and hers, but a Pennsylvania federal judge on Tuesday tossed her discrimination claims on the grounds that she'd sued the wrong company.

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### Female Doctor's VA Bias Suit Flops In Federal Court

An Oklahoma federal judge has ruled that the U.S. Department of Veterans Affairs didn't deny a job to a physician because she's a woman and from Puerto Rico, saying the interviewer's question about why she wanted to relocate to the Sooner State was hardly a smokescreen for bias.

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## WAGE & HOUR

### Las Vegas Hospital Inks \$4.2M Deal In Missed Breaks Suit

A Las Vegas medical center has agreed to pay \$4.25 million to settle a collective action brought by workers who say the hospital violated the Fair Labor Standards Act by automatically deducting pay for 30-minute meal breaks whether or not they were actually taken, court documents show.

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## LABOR

### Steel Co. Flouted NLRB Settlement With Union, 11th Circ. Says

The Eleventh Circuit has ruled that the National Labor Relations Board was right to find stainless steel producer Outokumpu failed to comply with a deal settling claims it tried to illegally stifle organizing efforts at an Alabama mill by posting a letter saying a union was responsible for a vote delay.

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## EXECUTIVE COMPENSATION

### Ex-Hertz Execs Get Advance Legal Fees In Clawback Suit

Car rental giant Hertz will have to pay four former executives' legal fees in a suit in which it's seeking to claw back incentive bonuses over misconduct allegations, with a Delaware Chancery Court judge saying Tuesday the company bylaws clearly require it.

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## WHISTLEBLOWER

### Software Co. To Pay \$22M To Settle FCA Misinformation Case

Cloud and data services company Informatica LLC will pay just under \$21.6 million to settle a whistleblower's False Claims Act case alleging it provided misleading information about its commercial sales practices, resulting in the government overpaying for its software products, the U.S. Department of Justice announced.

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## PEOPLE

### **Littler Snags Ex-Crowell & Moring Employment Pro In SoCal**

Littler Mendelson PC has added a new shareholder to the Irvine, California, office of its labor- and employment-focused practice, bringing on a Crowell & Moring LLP alum with a deep background in representing management in a range of workforce-related issues, the firm announced on Tuesday.

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### **BakerHostetler Adds Winston & Strawn Labor Partner In Calif.**

The former co-chair of Winston & Strawn LLP's Los Angeles labor and employment practice has joined BakerHostetler's own L.A. office, where he'll work as a partner defending employers from claims of sexual harassment, discrimination, labor contract violations and more, the firm said Monday.

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## EXPERT ANALYSIS

### **Practical Safeguards For Employee Use Of Messaging Apps**

Independent of the U.S. Department of Justice's recent interest in instant and ephemeral messaging apps, companies have plenty of sound reasons to control their use in the office and have an array of tools to do it, say Erin Schrantz and Andrew Philip Walker of Jenner & Block.

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## LEGAL INDUSTRY

### **Titan Of The Plaintiffs Bar: Robbins Geller's Shawn Williams**

"Have you seen 'Hamilton'?" asked Shawn Williams of Robbins Geller. Quoting from one of the hit Broadway show's most memorable songs, the securities litigation partner explained that it speaks to why he was drawn to the plaintiffs side of the bar.

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### **Law Has A Bullying Problem, But In BigLaw It's Even Worse**

Law firms are rife with bullying and the problem is worse still in BigLaw, according to the results of a massive international survey released Tuesday evening.

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### **The Legal Jobs Where Sexual Harassment Is Most Common**

More than a third of women in the legal profession have experienced sexual harassment, according to the results of a massive global survey released Tuesday that found a clear disparity among the rates of harassment reported at various types of legal employers.

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### **Firms, Clients Urged To Break New Fee Ground Through Trust**

To experiment with and adopt new initiatives such as alternative fee arrangements, in-house legal departments and law firms must form trusting relationships that develop mutual confidence and transparency, a panel of legal professionals said Tuesday.

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### **GCs See Legal Ops As Avenue To Improve Diversity**

In-house departments and law firms haven't yet made enough significant progress on diversity and inclusion in the legal industry, but a fresh set of eyes from legal operations teams might soon make some headway, general counsel said at a conference Tuesday.

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### **It's Kavanaugh V. Gorsuch In Apple Antitrust Case**

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President Donald Trump's two U.S. Supreme Court appointees have added to their growing list of disagreements, as Justice Brett Kavanaugh wrote the majority opinion backing iPhone owners in their antitrust suit against Apple Inc., which Justice Neil Gorsuch described as "senseless" in a dissent.

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### Senate Confirms Texas Atty To Eastern District Judgeship

The Senate on Tuesday confirmed Orgain Bell & Tucker LLP partner Michael Truncale to serve as a judge in the Eastern District of Texas.

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### Another Kirkland Vet Elevated To DOJ's Top Ranks

U.S. Attorney General William Barr said Tuesday that he has appointed fellow Kirkland & Ellis LLP veteran Claire Murray to a high-ranking spot at the Department of Justice.

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### FTC Staff Warns Lawyers: Don't Lie To Us

Federal Trade Commission staff have issued a stark warning to practitioners, saying attorneys could be barred from appearing before the commission if they intentionally mislead the agency during investigations or in-house proceedings.

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### Okla. Bar Says Atty Delivered Feces-Smeared Check

An attorney is facing disciplinary charges in Oklahoma's top court after he allegedly hand-delivered a check smeared with fecal matter to the state's bar association and asked that it be given to a certain lawyer.

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**From:** [GovExec Today](#)  
**To:** [Ring, John](#)  
**Subject:** Union argues OPM nominee has a "fundamental inability" to run an agency; more problems with FEMA contract management  
**Date:** Monday, May 13, 2019 5:34:48 AM

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**GovExec Today**

**May 13, 2019**



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**[FEMA Used Google Rather Than Verified Registry to Fill Hurricane Relief Contracts //](#)**

**Charles S. Clark**

Agency that has come under recent scrutiny for handling of contracts rejects IG recommendations.

**[Union Argues OPM Nominee Has a 'Fundamental Inability' to Run an Agency //](#)**

**Erich Wagner**

A management group stands by its support of Dale Cabaniss, although it remains wary of the plan to dismantle the personnel agency.

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The FedHeads are Robert Shea and Francis Rose, who love to talk about the arcana of government management and the people who are trying to make it better. They don't have t-shirts yet, but are open to ideas. If government is your bag, you've got to listen to 'em. They're the FedHeads.

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**[Ex-Im Bank Swears in Leader with New Quorum //](#)**

**Charles S. Clark**

Senate vote on Wednesday ended three years of limited operability.

**[We Want To Hear From You //](#)**

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**[Trump Taps Shanahan To Lead Defense, Ending Months of Speculation //](#)**

**Katie Bo Williams and Marcus Weisgerber**

The nomination marks the beginning of the end of the tenure of the longest-serving acting defense secretary.

[How to Keep Communication Quality High When Things Head in the Wrong Direction at Work](#) // Art Petty

Five approaches to getting things back on track.

[IARPA Needs More Training Data for Video Surveillance Algorithms](#) // Jack Corrigan

The data would improve the tech's ability to link together footage shot across a broad geographic space, allowing it to better track and identify potential targets.

[Composting, Clean-Ups and Comprehensive Planning to Combat Litter](#) // Kate Elizabeth Queram

Prince George's County, Maryland, has struggled for years with litter. Officials have launched a multi-year, multi-pronged effort to tackle it.

[Report: Dark Data Plagues Federal Organizations](#) // Brandi Vincent

Untapped data could unleash organizations' AI pursuits—but many leaders don't know where to begin.

[Pensions Have Shifted To Riskier Investments, Ratings Agency Finds](#) // Bill Lucia

But the new report says that this trend isn't necessarily producing stronger returns.

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**From:** [GovExec Breaking News](#)  
**To:** [Ring, John](#)  
**Subject:** VA Proposes New Union Contract That Guts Telework, Official Time, Employee Rights /  
**Date:** Friday, May 3, 2019 5:27:09 PM

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## GovExec Breaking News

May 3, 2019



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### [VA Proposes New Union Contract That Guts Telework, Official Time, Employee Rights //](#)

Erich Wagner

The Veterans Affairs Department [publicly announced](#) Thursday that management issued its first proposal to negotiate a new collective bargaining agreement with the nation's largest federal employee union, highlighting an effort to severely restrict the use of official time.

[Read full article »](#)

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**From:** [GovExec Today](#)  
**To:** [Ring, John](#)  
**Subject:** VA proposes union contract that guts telework, employee rights; the locations that made the cut for potential USDA office moves  
**Date:** Monday, May 6, 2019 5:32:23 AM

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**GovExec Today**

May 6, 2019



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**[VA Proposes New Union Contract That Guts Telework, Official Time, Employee Rights //](#)**

**Erich Wagner**

Department officials publicize proposal they say would re-center the focus on patient care, but union officials say department is making a "mockery" of the collective bargaining process.

**[Agriculture Department Names Finalists for Disputed Office Relocations //](#)**

**Charles S. Clark**

Sites in Indiana, Missouri, Kansas and North Carolina top list.

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**[Learn More.](#)**

**[House Democrats Push Back on TSA's Threat to End Collective Bargaining //](#)**

**Eric Katz**  
TSA administrator said he is undecided on whether unionization at TSA will continue.

**[Presidential Counselor Again Risks Hatch Act Violations //](#)**

**Charles S. Clark**  
Conway's White House driveway comments on Democratic candidate Biden draw scrutiny.

**[Trump Lauds Government Employees in Kickoff to Public Service Recognition Week //](#)**

**Tom Shoop**

They "ensure government works for the American people," he said.

**[Shifting the Pentagon's Employee Training to OPM Could Save Millions //](#)**

**Aaron Boyd**  
The move also establishes the Defense Department as a petri dish for OPM to obtain more data on how employees learn and where more training is needed.

**[DATA Act Collection Effort Worked Better for Grants Than Contracts](#) // Charles S. Clark**

Watchdog found documentation gaps in pilot plan for creating central portal.

**[10 Lessons Learned in Search of Success as a Leader](#) // Art Petty**

Newsflash: there are no shortcuts.

**[Listen: Should The Government Regulate Social Media?](#)**

After the livestream and widespread sharing of video from the Christchurch massacre in New Zealand, is it time to regulate social media?

**[Survey: Agencies Still Rely Largely on Manual Business Processes](#) // Brandi Vincent**

A recent survey found agencies' efforts to modernize business processes are immature.

**[Head Injuries Common in Scooter Crashes, Study Finds. Helmets Not So Much.](#) // Bill**

Lucia

The research out of Austin, Texas examines the cases of 190 people hurt riding electric scooters.

**[FAA Predicts the Commercial Drone Market Will Triple by 2023](#) // Jack Corrigan**

Last year's surge in drone registrations forced the Federal Aviation Administration to significantly revise its predictions about the industry's long-term growth.

**[Finding History Along the Highway](#) // Emma Coleman**

State archeologists in Maryland are digging up the history of slavery in the state, connecting the DNA of an enslaved woman who lived on a plantation 200 years ago to modern-day descendants in Sierra Leone.

**[Fighter Jets with Missile-Killing Lasers Take Another Step Toward Reality](#) // Patrick**

Tucker

U.S. Air Force says a ground-based laser downed multiple test missiles over New Mexico.

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**From:** [Employment Law360](#)  
**To:** [Ring John](#)  
**Subject:** Week In Review: High Court's Epic Systems Ruling Turns 1 & Feds Drop Spring Reg Agenda  
**Date:** Saturday, May 25, 2019 11:18:54 AM

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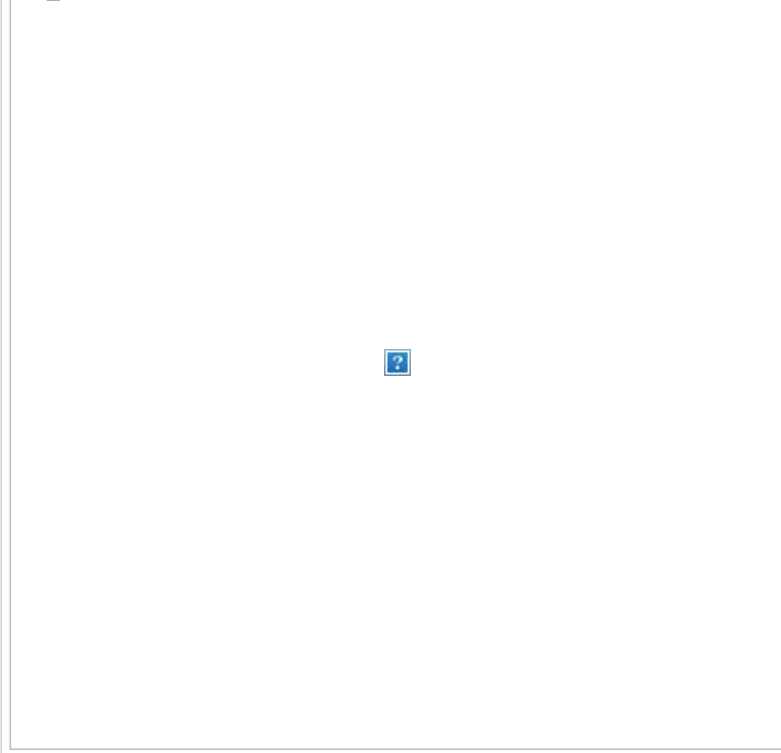
## Employment Week In Review

Saturday, May 25, 2019



### TOP NEWS

DC\_107.JPG



#### An Epic Year? High Court's Class Waiver Ruling Turns 1

A year ago today, the U.S. Supreme Court answered one of employment law's most hotly debated questions when it blessed class action waivers in its 5-4 *Epic Systems Corp. v. Lewis* ruling. Here, in the first in a four-article series marking the anniversary of the blockbuster split decision, Law360 looks at the impact *Epic Systems* has had so far.

#### Insiders Look Back At Epic Systems' Rise To The High Court

A question seemingly destined for Supreme Court review. The unexpected death of a renowned conservative justice. The NLRB and the DOJ on opposite sides of a case. Here, in the second of a four-article series marking the anniversary of the blockbuster *Epic Systems* ruling, attorneys who were involved offer an insider's view of 2018's biggest employment case.

#### How A 1925 Law Evolved To Become Crucial For Employers

Nearly a century after its passage, the Federal Arbitration Act of 1925 has taken on a life experts say its drafters never imagined. In the third of a four-article series marking the anniversary of the *Epic Systems* ruling, Law360 charts how a law envisioned as a narrow procedural reform ended up with a

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starring role in the biggest employment decision of 2018.

### **An Epic Timeline: The Cases That Set The Stage**

The Epic Systems case may have captivated Supreme Court watchers in 2018, but the seeds that led to last May's blockbuster decision were sown by the California Supreme Court and the National Labor Relations Board many years earlier. Here, in the final installment of a four-article series marking the one-year anniversary of the Epic Systems ruling, Law360 follows class waiver law's winding path to the nation's highest court.

## **POLICY & REGULATION**

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### **NLRB Targets Grad Student Unions In New Reg Agenda**

The National Labor Relations Board is planning to unveil regulations that clarify whether graduate student assistants at private universities can unionize and the U.S. Department of Labor will seek public feedback on a potential update to rules governing the Family and Medical Leave Act, according to a regulatory road map the federal government released Wednesday.

### **DOL's Planned \$35K OT Salary Threshold Draws Ire**

Workers' advocates and some small businesses slammed the U.S. Department of Labor's proposal to set the minimum annual salary to qualify for a "white collar" overtime pay exemption under the FLSA at about \$35,000, although those strange bedfellows had very different ideas about how the right rule would look.

### **Top Dems Unveil Proposal To Roll Back Epic Systems**

Top congressional Democrats floated a bill Wednesday to upend the U.S. Supreme Court's year-old Epic Systems decision and block employers from using class action waivers that block workers from pursuing employment claims as a group.

## **EXPERT ANALYSIS**

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### **How DOJ Compliance Guide Affects Employer Best Practices**

April guidance from the U.S. Department of Justice on corporate compliance programs serves as a reminder of the value of coordination among a company's human resources, legal and compliance functions, say Steven Pearlman and Pinchos Goldberg of Proskauer.

[U.S. Chamber of Commerce](#)  
[Waterstone Mortgage Corp.](#)

#### **GOVERNMENT AGENCIES**

[California Supreme Court](#)  
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**From:** [Employment Law360](#)  
**To:** [Ring John](#)  
**Subject:** Week In Review: NLRB Deems Uber Drivers Contractors & High Court Tackles FCA Limitations Period  
**Date:** Saturday, May 18, 2019 11:06:20 AM

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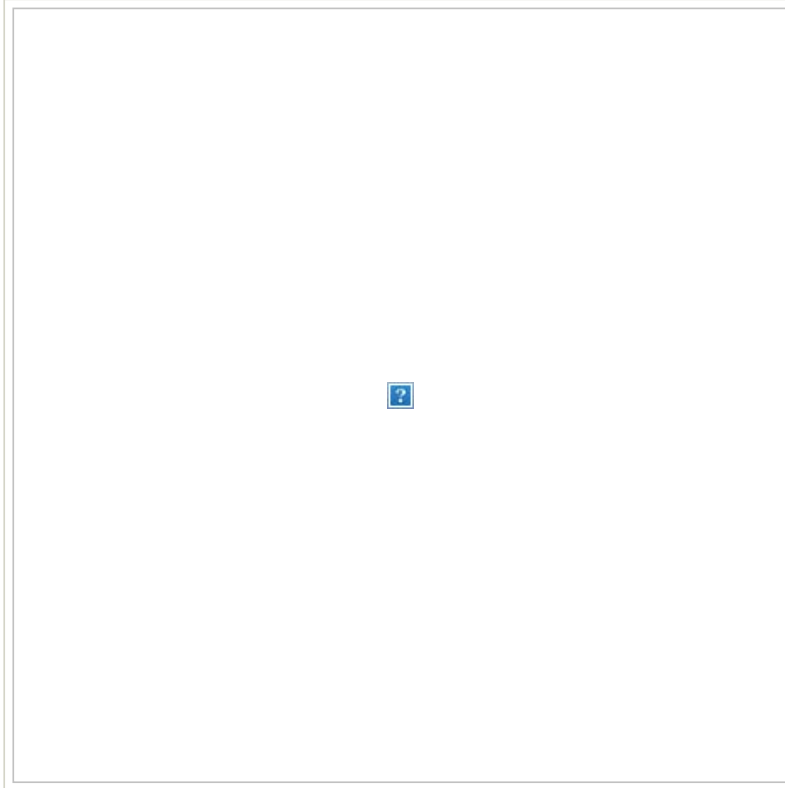


## Employment Week In Review

Saturday, May 18, 2019



### TOP NEWS



#### Uber Drivers Can't Unionize, NLRB Advice Memo Says

Uber drivers are independent contractors who aren't eligible to unionize, the National Labor Relations Board said Tuesday, marking the second time in less than a month that the Trump administration has declared gig economy workers aren't "employees" under federal workplace law.

#### NLRB Advice Memo May Be Bad News For Fat Cat, Scabby

Banners and inflatable cat and rat balloons that unions sometimes use during demonstrations can qualify as illegal forms of secondary picketing, the National Labor Relations Board general counsel's office said in one of several advice memorandums it unveiled Tuesday.

#### High Court Extends Time Limit For Nonintervened FCA Cases

The U.S. Supreme Court ruled unanimously on Monday that the "government knowledge" statute of limitations applies in False Claims Act cases regardless of whether the government intervenes, expanding the time relators have to file FCA claims by up to four years in some circumstances.

#### #MeToo Raises Stakes On Efforts To Root Out Wage Gaps

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[New York City Council](#)  
[U.S. Department of Defense](#)  
[U.S. Department of Justice](#)  
[U.S. Department of Labor](#)  
[U.S. Department of Transportation](#)  
[U.S. Supreme Court](#)  
[Wage and Hour Division](#)

Nearly two years after the Harvey Weinstein scandal galvanized the #MeToo movement and pushed the issue of sexual misconduct into the national spotlight, experts say the movement is now increasingly fueling efforts to draw attention to gender-based pay inequity. Here, Law360 looks at five things employers can do to find and fix illegal wage disparities between women and men.

### **DOL Delays Deadlines For Joint Employer, OT Rate Feedback**

The U.S. Department of Labor on Monday gave the public 15 more days to weigh in on plans to tighten its test for joint employer status and exclude certain perks from the formula employers use to calculate workers' overtime pay.

## **EXPERT ANALYSIS**

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### **Takeaways From NYC Ban On Preemployment Marijuana Tests**

New York City just enacted a first-of-its-kind law barring preemployment marijuana testing for all but a select few job categories, and employers should reasonably expect that at least some states or municipalities will follow, say Robert Nichols and Rebecca Baker of Bracewell.

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**From:** [POLITICO's Morning Shift](#)  
**To:** [Ring, John](#)  
**Subject:** Who's in charge at DOL? — Lawmakers push over marijuana worker immigration policy — 2020 candidates call for teacher pay bump  
**Date:** Wednesday, May 29, 2019 10:04:18 AM

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May 29, 2019

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2018 Newsletter Logo: Morning Shift



BY REBECCA RAINEY

*With help from Doug Palmer and Tim Noah*

*Editor's Note: This edition of Morning Shift is published weekdays at 10 a.m. POLITICO Pro Employment & Immigration subscribers hold exclusive early access to the newsletter each morning at 6 a.m. To learn more about POLITICO Pro's comprehensive policy intelligence coverage, policy tools and services, click [here](#).*

QUICK FIX

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— The White House is keeping Labor Secretary Alexander Acosta on a very tight leash.

— A bipartisan group of lawmakers wants DHS to reverse its new policy of denying citizenship to workers in the legal marijuana industry.

— Several Democratic presidential candidates are calling for a teacher pay bump.

**GOOD MORNING!** It's Wednesday, May 29, and this is Morning Shift, your daily tipsheet on labor and immigration news. Send tips, exclusives, and suggestions to [rrainey@politico.com](mailto:rrainey@politico.com), [thesson@politico.com](mailto:thesson@politico.com), [ikullgren@politico.com](mailto:ikullgren@politico.com), and [tnoah@politico.com](mailto:tnoah@politico.com). Follow us on Twitter at [@RebeccaARainey](https://twitter.com/RebeccaARainey), [@tedhesson](https://twitter.com/tedhesson), [@IanKullgren](https://twitter.com/IanKullgren), and [@TimothyNoah1](https://twitter.com/TimothyNoah1).

#### DRIVING THE DAY

**LABOR SECRETARY MICK MULVANEY?:** "President Donald Trump's acting chief of staff, Mick Mulvaney, has seized power over the Labor Department's rulemaking process out of frustration with the pace of deregulation under Labor Secretary Alexander Acosta," Bloomberg Law's Ben Penn [reports](#). "Upon arriving at the West Wing in January, Mulvaney instituted a formalized system for settling regulatory policy and timeline disputes between White House assistants and Acosta's top aides."

**White House officials** have recently tightened their grip on the department. Secretary Alexander Acosta's chief of staff Nick Geale will be leaving the office by the end of this week at the instruction of White House officials, after an investigation raised questions about his professional conduct. But Axios' Jonathan Swan, who broke the Geale news, [reported](#) that a source close to the president questioned whether Geale was the problem and that Acosta could be next on the Trump cabinet chopping block. "It's not clear to me that Nick is the only problem," the source told Swan at the time. "You take your cues from the top."

#### LAWMAKERS URGE ENDING MARIJUANA WORKER POLICY:

Representatives [Joe Neguse](#) (D-Col.), [Hakeem Jeffries](#) (D-N.Y.), and [Kelly](#)

[Armstrong](#) (R-N.D.) will send a letter today urging Attorney General Barr and DHS Acting Secretary McAleenan to retract guidelines issued in April that allow denial of legal citizenship based on work in the marijuana industry -- even if the candidate for naturalization worked in one of the 33 states where the drug is legal for medical or recreational use.

**The policy guidance** stated that applicants "involved in certain marijuana related activities" — indicating industry workers — may not be able to meet the "good moral character" benchmark for citizenship "even if such activity is not unlawful under applicable state or foreign laws." The Associated Press [reported](#) last month that "two people said they were denied U.S. citizenship" because of their work in the industry. More on the April guidance from POLITICO's Lauren Gardner [here](#).

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**Sick and tired of traffic?** Relief may not be as far off as you think. [POLITICO Magazine's "What Works" series](#) looks at innovative ways that cities are trying to reduce traffic, from [density-focused light rail](#) to [congestion pricing](#) to an outright [car ban](#) on the busiest streets. If you could change anything to reduce congestion or improve transportation in your city, what would it be? [Tell us here](#) and we'll publish the most thoughtful responses.

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#### IN THE WORKPLACE

**GOOGLE'S FISSURED WORKPLACE:** Google has about 121,000 temp and contract employees worldwide, compared to 102,000 full-time employees, The New York Times' Daisuke Wakabayashi reports. The temp and contract workers "make less money, have different benefits plans, and have no paid vacation time in the United States, according to more than a dozen current and former Google temp and contract workers," he writes. Google did [announce](#) in April that it will require its contractors to provide health benefits, a \$15 minimum wage, and paid parental leave; this [after more than 900 of its employees signed a letter](#) protesting the company's treatment of contract workers. But the company is not alone in its practice of outsourcing work to non-employees; "contingent labor accounts for 40 to 50 percent of the workers at most technology firms," Wakabayashi notes.



**Such outsourcing is a phenomenon that David Weil**, former administrator of the Obama Labor Department's Wage and Hour division, described in an influential [2014 book](#) as the "fissured workplace," and it's a much bigger deal than the much-discussed gig economy (which, if defined as the percentage of workers employed solely as independent contractors, is [not growing](#)). The "fissured workplace" describes the full spectrum of arms-length arrangements by which businesses over the past half-century have avoided paying payroll taxes, providing benefits and a host of legal liabilities entailed in formal employment. Some companies depend on temp agencies or other contracting companies; others avoid expanding payroll through franchising. At Google, Wakabayashi reports, "contractors handle a range of jobs, from content moderation to software testing," and former and current workers described Google as "the employer in all but name."

**Weil argued in a 2017 essay** that contracting out work "not only means lower wage growth and reduced access to benefits, but also diminished opportunities for on-the-job training, protections from social safety nets like unemployment insurance and workers' compensation, access to valuable social networks, and other pathways to upward advancement. Taken together, the fissured workplace contributes to growing earnings [inequality](#)." Read Weil's 2017 essay [here](#) and more from the Times [here](#).

## 2020 WATCH

**SANDERS PRESSES ECONOMIC DEMOCRACY:** Democratic 2020 presidential hopeful Bernie Sanders says his campaign is working on proposals "to require large businesses to regularly contribute a portion of their stocks to a fund controlled by employees" and to require corporations "to give workers a share of the seats on their boards of directors," Jeff Stein reports for the Washington Post.

**"We can move to an economy** where workers feel that they're not just a cog in the machine — one where they have power over their jobs and can make decisions," Sanders told Stein. "Democracy isn't just the opportunity to vote. What democracy really means is having control over your life." Robert Hockett, who teaches law and finance at Cornell University told Stein that the proposals are a sign of a "virtuous competition" between 2020 Democratic candidates "in reexamining the fundamental relationship between capital and labor." More [here](#).

**TEACHER PAY ATOP MANY 2020 DEMS AGENDAS:** Joe Biden on Tuesday

joined in with many of his 2020 competitors in calling for teacher pay raises, unveiling a wide-ranging K-12 and early education [plan](#), "targeted to increasing educator pay and leveling the playing field between rich and poor school districts," POLITICO's Nicole Gaudiano reports. Biden is rolling out his plan in Houston during a town hall meeting that's part of an elaborate teachers union endorsement process led by the American Federation of Teachers, she reports.

**"His rollout follows broad education proposals** unveiled by other top candidates, including Sen. [Bernie Sanders](#) (I-Vt.), who also called for tripling Title I funding for low-income schools and for setting a minimum starting salary for teachers of \$60,000. Sen. [Kamala Harris](#) (D-Calif.) [proposed](#) spending \$315 billion over 10 years to boost teacher pay, while former San Antonio Mayor Julian Castro has called for giving teachers a tax credit of up to \$10,000." A recent [report](#) by the left-leaning Economic Policy Institute found that teachers were paid 21.4 percent less than similarly educated and experienced professionals in 2018. More from Gaudiano [here](#).

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**POLITICO LAUNCHES NEW GLOBAL PODCAST:** Trade. Technology. The environment. The globe is beset by profound challenges that know no political bounds. But are our world leaders up to the task of solving them? POLITICO's newest podcast, "Global Translations" presented by Citi and launching on June 6, will go beyond the headlines, uncovering what's really at stake with the most pressing issues of our time, the political roadblocks for solving them and the ideas that might just propel us forward. [Subscribe](#) to receive the first episode at launch.

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## IN THE STATES

**NEW MAINE LAW REQUIRES PAID SICK LEAVE:** Democratic Maine Gov. Janet Mills on Tuesday signed into law a [paid sick leave bill](#) that would require companies with 10 or more employees in the state to offer one hour of earned paid time off, up to 40 hours, for every 40 hours worked, according to WMTW. Currently 10 states and Washington D.C. require employers to offer paid sick leave, according to the [National Council of State Legislatures](#). Some lawmakers estimate the legislation will cover 85 percent of Maine workers, according to

WMTW. The law will go into effect in 2021.

The Maine Chamber of Commerce [opposes the legislation](#), arguing that the proposal will increase employers' bottom lines and create "another deterrent for employers to locate or expand their businesses in Maine." More from WMTW [here](#).

## AT THE BORDER

### EXCLUSIVE — DEM SENATORS QUESTION TSA BORDER

**REASSIGNMENTS:** Nearly a dozen Senate Democrats signed onto a letter from Senator Catherine Cortez Masto Tuesday pressing Acting DHS Secretary Kevin McAleenan over the agency's plans to reassign hundreds of TSA staff to help deal with the influx of migrants at the southern border. "TSA officials have acknowledged that moving agents to work on our southern border carries risk to our national security," the letter says. "Taking TSA agents away from their mission depletes resources from a critical national security agency that must focus on staying ahead of the dynamic threat to aviation." DHS has, so far, has reassigned more than 700 CBP agents and requested more than 400 volunteers from TSA's ranks, according to POLITICO's Stephanie Beasley.

[Last week](#), McAleenan defended the reassignments, telling House lawmakers that "We're not going to put the traveling public at risk. We're not going to reduce our security posture in any way." The senators who signed the letter, including presidential candidates Bernie Sanders, Amy Klobuchar, Cory Booker, Kirsten Gillibrand, and Elizabeth Warren, request that McAleenan clarify how many agents will be sent to the border, and whether reassigned agents will receive any family welfare training. Read the letter [here](#).

**Related read:** "A Summer From Hell Is Coming to U.S. Airports," from [Bloomberg](#)

### MINORS ACCOUNT FOR HIGHEST NUMBER OF BORDER CROSSINGS:

"Nearly 169,000 youths have surrendered at the southern border in the first seven months of this fiscal year, and more than half are ages 12 and under," Maria Sacchetti reports for The Washington Post. "Minors now account for nearly 37 percent of all crossings — far above previous eras, when most underage migrants were teenagers and accounted for 10 percent to 20 percent of

all crossings."

**Border Patrol arrested nearly 99,000** migrants at the southwest border in April, marking a 10-year high, POLITICO's Ted Hesson [reported earlier this month](#). More than half of those arrested were family members -- instead of the single males of a decade ago -- creating unfamiliar new problems for an administration that has made fighting illegal immigration one of its highest priorities. In response to the influx, the White House earlier this month urged Congress to provide an additional \$4.5 billion in funding this year for border operations, but congressional negotiators last week [declined](#) to include it in a disaster aid bill. More from the Post [here](#).

**Related read:** "A private group says it's started building its own border wall using millions donated in GoFundMe campaign," from [CNN](#)

**ACOSTA PRESSES CASE FOR USMCA IN MICHIGAN TODAY:** Labor Secretary Alexander Acosta will visit a Stanley Black and Decker division in Dexter, Mich., this afternoon to push for congressional approval of USMCA. That's according to the Association of Equipment Manufacturers, whose vice president, Kip Eideberg, will also attend the event.

#### WHAT WE'RE READING

— "With His Job Gone, an Autoworker Wonders, 'What Am I as a Man?'," from [The New York Times](#)

— "Gov. Polis signs immigration and dozens of other bills into law," from [The Colorado Springs Gazette](#)

— "Savior of G.M. Lordstown Plant, Hailed by Trump, Is a Corporate Cipher," from [The New York Times](#)

— "Border Patrol to hire staff to help with migrant processing," from [The Associated Press](#)

**THAT'S ALL FOR MORNING SHIFT!**

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Subject: Will Revived Pay Data Reg Force BigLaw's Hand On Equality?  
Date: Thursday, May 2, 2019 3:33:00 AM



EMPLOYMENT

/a>

Thursday, May 2, 2019



## TOP NEWS

### Analysis

#### Will Revived Pay Data Reg Force BigLaw's Hand On Equality?

Federal enforcement actions and pressure from clients could be the new frontier in tackling discrimination at law firms as the government prepares to gather new race- and gender-based pay data from large firms before the end of the year.

[Read full article »](#)

#### Lyft Can't Slam Brakes On Minimum Pay Rate For NYC Drivers

Lyft lost its bid to block New York City's rules establishing first-of-their-kind minimum pay rates for drivers of app-based ride-hailing companies after a state judge ruled that city officials thoroughly analyzed the industry's economic impact before crafting the new regulations.

[Read full article »](#)

#### Acosta Defends Epstein Plea At Labor Committee Hearing

U.S. Secretary of Labor Alex Acosta forcefully pushed back Wednesday as Democratic lawmakers voiced concerns that his alleged mishandling of a decade-old sex crime case against millionaire Jeffrey Epstein meant he might also let employers off easy for workplace law violations.

[Read full article »](#)

#### Ex-Reed Smith Paralegal Blames Studies For Bias Suit Delays

A former Reed Smith LLP paralegal who accused the firm of racial bias told a New Jersey federal judge Wednesday that she didn't have the time or money to comply with her old employer's 13-month-old materials request because she's in her third year of law school and not working.

[Read full article »](#)

#### US Women's Soccer Stars Can Play On In Pay Bias Suit

The U.S. women's national soccer team can move forward with its lawsuit accusing the U.S. Soccer Federation of paying the players significantly less than their male counterparts, after a California federal judge refused to grant the federation a time-out while the players' request to transfer the case is pending.

[Read full article »](#)

### Analysis

#### What's Holding Up High Court's Separation-Of-Powers Case?

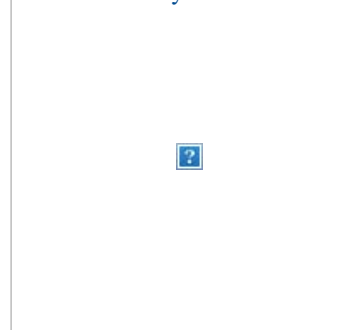
The U.S. Supreme Court has decided all but one case last heard during its October sitting, an appeal from a convicted sex offender that conservatives are hoping will help rein in the executive branch. What's taking so long?

[Read full article »](#)

## DISCRIMINATION

#### Exxon Wants Out Of Ill. Refinery Worker's Harassment Suit

## Law360 Pro Say Podcast



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### New Cases

[Discrimination \(69\)](#)

[ERISA \(24\)](#)

[Labor \(34\)](#)

### LAW FIRMS

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[Brown Rudnick](#)

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[Carmagnola & Ritardi](#)

[Chavez & Gertler](#)

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[Console Mattiacci](#)

[Constangy Brooks](#)

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[Dykema Gossett](#)

[Fox Rothschild](#)

[Freeman Mathis](#)

[Fried Frank](#)

[Gibson Dunn](#)

[Goodwin](#)

[Gordon & Rees](#)

[Greenberg Traurig](#)

Exxon Mobil Corp. told an Illinois federal judge Tuesday that an employee suing the oil and gas company hasn't shown evidence that her alleged harassment was because of her sex and sexual orientation, or that Exxon retaliated against her for reporting it.

[Read full article »](#)

### **IKEA Says Age Bias Claims Too Vague To Go Ahead**

IKEA told a Pennsylvania federal court Tuesday that an employee's collective action alleging that the retailer fails to promote qualified older internal applicants should be trimmed for being too vague and not specifying which policies are at issue.

[Read full article »](#)

## **WAGE & HOUR**

### **Calif. Resort Inks \$2M Deal In Workers' 'Fake Break' Suit**

A Los Angeles luxury resort has agreed to pay \$2.1 million to settle a proposed class action brought by workers who claim the hotel violated California law by failing to provide meal and rest breaks and then inserting "fake breaks" into their time records, court documents show.

[Read full article »](#)

### **Attys Ask \$2M For Exposing Firm's \$5M Wells Fargo Side Deal**

Counsel for a now-deceased intervenor who exposed a Los Angeles law firm's \$5.4 million side deal with Wells Fargo in wage and hour litigation are seeking \$2.38 million in fees and a \$7,500 incentive award, telling a California judge Wednesday the deal wouldn't have been exposed without the man's extraordinary efforts.

[Read full article »](#)

## **LABOR**

### **NLRB's Top Lawyer Asks Board To Scuttle Joint Employer Test**

The National Labor Relations Board's top attorney has urged the board's four sitting members to nix the expanded joint employment test laid out in its 2015 Browning-Ferris Industries ruling and say a business must have "direct control" over workers to be required to bargain with them or answer for labor law violations.

[Read full article »](#)

### **Volvo Group Must Reinstate Worker Axed For Union Support**

A National Labor Relations Board judge has ordered Volvo Group North America to rehire a Mississippi industrial worker fired, ostensibly, for breaking a rule against backing in or out of warehouse aisles, saying his firing came after a series of trumped-up write-ups targeting him for his vocal union support.

[Read full article »](#)

### **Ill. State Workers Sue For Pre-Janus Union Agency Fees**

Nine current and former Illinois state employees who previously paid agency fees to an American Federation of State, County and Municipal Employees local unit filed suit Wednesday to get their money back in light of the U.S. Supreme Court's Janus decision.

[Read full article »](#)

## **EXECUTIVE COMPENSATION**

### **Google CLO Made \$47.2M Despite Scandal-Filled 2018**

Google paid its parent company's chief legal officer \$47.2 million in 2018 — the same year he weathered reports of a workplace extramarital affair and claims he didn't adequately address sexual harassment by fellow executives, U.S. Securities and Exchange Commission filings revealed Tuesday.

Hays McConnell  
Hunton Andrews Kurth  
Husch Blackwell  
Initiative Legal Group  
Jackson Lewis  
Jenner & Block  
Jones Day  
Keller & Benvenuti  
LeClairRyan  
Littler Mendelson  
Mehri & Skalet  
Motley Rice

Ogletree Deakins  
Outten & Golden  
Pepper Hamilton  
Reed Smith  
Rosner Law Group LLC  
Salvatore Prescott  
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Sidley Austin  
Sills Cummis  
Skadden  
The Killian Firm  
Valle Makoff  
Weisbrod Matteis  
Whiteford Taylor  
Wilentz Goldman  
Williams Mullen  
Winston & Strawn

## **COMPANIES**

AB Volvo  
Aetna Inc.  
American Civil Liberties Union  
American Federation of Labor and Congress of Industrial Organizations  
American Federation of State, County and Municipal Employees  
DaVita Inc.  
Ethiopian Airlines Enterprise  
Exxon Mobil Corp.  
Fisker Automotive Holdings  
Fordham University  
Google Inc.  
Inter IKEA Systems BV  
International Brotherhood of Teamsters  
KeyPoint Government Solutions  
LexisNexis Group  
LinkedIn Corp.



[Read full article »](#)

## WHISTLEBLOWER

### Whistleblower Gets New Go at FCA Suit Against Gov't Vendor

The Tenth Circuit has revived a False Claims Act suit against a company that provides background checks for government employees, saying there are unanswered questions about whether the whistleblower met the act's standards for filing suit.

[Read full article »](#)

### SEC Must Decide On Teva Whistleblower Award, DC Circ. Told

A purported whistleblower who claims to have alerted the U.S. Securities and Exchange Commission to misconduct by Teva Pharmaceutical Industries Ltd. eight years ago has accused the securities regulator of taking too long to decide whether to issue an award.

[Read full article »](#)

### Wilentz Goldman Wants Whistleblower's \$1.5M Verdict Nixed

The law firm Wilentz Goldman & Spitzer PA moved Wednesday to overturn a jury's \$1.5 million verdict for a lawyer it found was fired for refusing to accept an unethical settlement to help the firm collect on an expected \$45 million fee windfall.

[Read full article »](#)

## BANKRUPTCY

### Fisker Auto's Ch. 11 WARN Fight May Go To Trial, Judge Says

Remnants of bankrupt electric car maker Fisker Automotive kicked up fresh sparks Wednesday, when a Delaware judge said the company and laid-off workers should consider dates for a trial in a dispute over first-in-line payment claims.

[Read full article »](#)

## PEOPLE

### Ogletree Snags Employment Veteran From Greenberg Traurig

A seasoned attorney who formerly co-chaired Greenberg Traurig's labor and employment group has joined Ogletree Deakins in Tampa, bringing with him 50 years of experience practicing law in Florida.

[Read full article »](#)

### Littler Picks Up Employment Pro From Barran Liebman

Littler Mendelson PC has bolstered its ranks in Oregon by bringing on a versatile employment attorney from Barran Liebman LLP as a shareholder in its Portland office.

[Read full article »](#)

### Amid Departures, LeClairRyan Launches 2nd Texas Office

LeClairRyan made its second foray into Texas on Wednesday, opening a Dallas office with eight practitioners focusing on labor and employment and aviation matters.

[Read full article »](#)

## EXPERT ANALYSIS

### Exploring EEOC Charge Questions At High Court

During U.S. Supreme Court oral arguments in *Fort Bend County v. Davis*, Justice Samuel Alito seemed to favor the argument that defendants can rely on procedurally defective U.S. Equal Employment Opportunity Commission charges at any point in litigation. But there is concern that this would impose a burden on district courts, says Arlene Switzer Steinfield at Dykema.

[Lyft Inc.](#)

[National Right to Work Legal Defense Foundation](#)

[New York Times Co.](#)

[Perspecta Inc.](#)

[Reed Elsevier](#)

[Takeda Pharmaceutical Co. Ltd.](#)

[Teva Pharmaceutical Industries Ltd.](#)

[The Boeing Co.](#)

[Treliant Risk Advisors LLC](#)

[Uber Technologies Inc.](#)

[United Auto Workers](#)

[United States Soccer Federation Inc.](#)

[Wal-Mart Stores Inc.](#)

[Wells Fargo & Co.](#)

## GOVERNMENT AGENCIES

[Department of Commerce](#)

[Equal Employment Opportunity Commission](#)

[Federal Bureau of Investigation](#)

[National Labor Relations Board](#)

[National Security Agency](#)

[Securities and Exchange Commission](#)

[U.S. Department of Energy](#)

[U.S. Department of Justice](#)

[U.S. Department of Labor](#)

[U.S. Office of Personnel Management](#)

[U.S. Supreme Court](#)

[United States Bankruptcy Court for the District of Delaware](#)



[Read full article »](#)

### **New Clarity From NLRB On Successor Bargaining Duties**

The National Labor Relations Board's recent Ridgewood Health Care Center decision will benefit successor employers in escaping so-called perfectly clear successor liability, providing flexibility following an acquisition of a business with a unionized workforce, say Amber Rogers and Gary Enis at Hunton.

[Read full article »](#)

## **LEGAL INDUSTRY**

### **Senate OKs Ala., Texas Court Picks As Trump Nears 100 Mark**

The Senate confirmed two more of President Donald Trump's judicial nominees Wednesday, for Alabama and Texas, and voted to shorten debate time on three others as the president nears 100 judicial appointments.

[Read full article »](#)

### **Sen. Dems Decry Barr's 'Masterful Hairsplitting' On Mueller**

Attorney General William Barr backed out of a planned House Judiciary Committee hearing scheduled for Thursday after repeatedly clashing with its Senate counterpart Wednesday over special counsel Robert Mueller's investigation.

[Read full article »](#)

### **Fox Rothschild Splits With Atty Behind Flood Of Porn IP Suits**

Fox Rothschild LLP is parting ways with an attorney who represents a porn studio that has filed thousands of copyright lawsuits over the past two years, a wave of litigation that has drawn sharp rebukes from federal judges.

[Read full article »](#)

### **Buckley Sandler Co-Founder Helps Launch New DC Law Firm**

After retiring last year from the law firm he co-founded — Buckley Sandler — Andy Sandler has now teamed up with two long-time colleagues to form a financial services-focused law firm managed by women in Washington, D.C., according to an announcement Wednesday.

[Read full article »](#)

### **Amid Fallout From Crashes, Boeing Appoints New GC**

As Boeing weathers a host of legal and regulatory challenges arising from two deadly airplane crashes, Brett Gerry, the former president of the company's Japanese operations, has been appointed as new general counsel, the company announced Wednesday.

[Read full article »](#)

### **Walmart Taps Former DaVita Exec As New Health GC**

Walmart has hired a health care industry veteran who most recently was a DaVita executive to join its legal department as senior vice president and general counsel of health and wellness, the retailer said Wednesday.

[Read full article »](#)

### **Law Firm Leaders: Cozen O'Connor's Michael Heller**

Cozen O'Connor Executive Chairman and CEO Michael Heller spoke to Law360 about the changes that have reshaped his firm since he joined nearly 25 years ago and the legal industry at large.

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U.S. Securities & Exchange Commission

San Francisco, California

**Attorney Adviser**

U.S. Securities & Exchange Commission  
Washington, District of Columbia

**Employment Litigation Associate**

Ogletree Deakins Law Firm  
Washington, District of Columbia

**NYC Big-Law litigation assoc (3-4 yrs exp)**

KLR Davis  
New York, New York

**mid level L&E assoc/40 yr old 50 atty NYC firm**

Schoen Legal Search  
New York, New York

Washington, District of Columbia

**Mid-sized White Plains firm seeks mid-senior litigation associate**

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White Plains, New York

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Los Angeles, California

**Labor & Employment Associate - (1+ yrs Exp.)**

Jones Day  
San Diego, California

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Round-Trip

WASHINGTON, DC

METROPARK, NJ

MAY 21, 2019

Depart

TRAIN	ACELA EXPRESS	WASHINGTON - METROPARK (ISELIN)	DEPARTS	ARRIVES (Tue May 21)
2168	May 21, 2019	1 Acela Express Business CI Seat	1:50 PM	4:13 PM

Return

TRAIN	ACELA EXPRESS	METROPARK (ISELIN) - WASHINGTON	DEPARTS	ARRIVES (Wed May 22)
2107	May 22, 2019	1 Acela Express Business CI Seat	7:28 AM	9:59 AM

PASSENGERS (1)

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RING, JOHN F

ADULT

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APRIL 2, 2019

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JOHN F RING		
██████████ (ending in (b) (6)) (Purchase)	<b>Total</b>	<b>\$336.00</b>
Authorization Code ██████████ (b) (6)		

### Purchase Summary - Ticket Number 1360010079264

<b>Train 2168: WASHINGTON, DC - METROPARK (ISELIN), NJ</b>	
Depart 1:50 PM, Tuesday, May 21, 2019	
1 ACELA EXPRESS BUSINESS CL SEAT	<b>\$168.00</b>
<b>Ticket Terms &amp; Conditions</b>	
ACELA EXPRESS SERVICE, NO PARTIAL REFUND IF USED ON OTHER SERVICE	
<b>Subtotal</b>	<b>\$168.00</b>
<b>Train 2107: METROPARK (ISELIN), NJ - WASHINGTON, DC</b>	
Depart 7:28 AM, Wednesday, May 22, 2019	
1 ACELA EXPRESS BUSINESS CL SEAT	<b>\$168.00</b>
<b>Ticket Terms &amp; Conditions</b>	
ACELA EXPRESS SERVICE, NO PARTIAL REFUND IF USED ON OTHER SERVICE	
<b>Subtotal</b>	<b>\$168.00</b>
<b>Total Charged by Amtrak</b>	<b>\$336.00</b>

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**To:** [Bashford, Jo Ann](#); [Ring, John](#); [SM-ETravel](#)  
**Subject:** E-TICKET RECEIPT - JOHN F RING - Travel Date: 21MAY19 - Ref: OSOEZW  
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Trip on May 21, 2019

Locator: OSOEZW

Date: May 16, 2019

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ATTN-JOHN RING  
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**1:50 PM, May 21, 2019**  
**WASHINGTON - UNION STATION**  
**50 MASSACHUSETTS AVE. N.E.**  
**WASHINGTON**

ARRIVAL  
**4:13 PM, May 21, 2019**  
**METROPARK**  
**100 MIDDLESEX-ESSEX TPK.**  
**METROPARK ISELIN**

Status Confirmed  
Notes LV-1350/DT-21MAY/FR-WASHINGTON/AT-METROPARK ISELIN/NA-TRAIN  
2168/AR-1613/CF-2V6C84D8--A

Tuesday, May 21, 2019

Confirmation 85897000

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LOCATION  
**1 HOTEL ROAD**  
**NEWARK, NJ US 07114**

CONTACT  
**Tel 1-973-6230006**  
**Fax 1-973-6237618**

Reserved For JOHN F RING  
Status Confirmed  
Check-In May 21, 2019  
Check-Out May 22, 2019  
Number of Rooms 1  
Rate USD 141.00/night  
Cancellation Policy Cancel 3 days prior  
Membership No 362048142  
Notes HTL POLICY-CANCEL 72HRS PRIOR ARR

Wednesday, May 22, 2019

Confirmation 2V6C84D8

**Rail AMTRAK TRAIN 2107**

DEPARTURE  
**7:28 AM, May 22, 2019**  
**METROPARK**  
**100 MIDDLESEX-ESSEX TPK.**  
**METROPARK ISELIN**

ARRIVAL  
**9:59 AM, May 22, 2019**  
**WASHINGTON - UNION STATION**  
**50 MASSACHUSETTS AVE. N.E.**  
**WASHINGTON**

Status Confirmed  
Notes LV-0728/DT-22MAY/FR-METROPARK ISELIN/AT-WASHINGTON/NA-TRAIN  
2107/AR-0959/CF-2V6C84D8-

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JOHN F RING	649717/FPT0010079264/16MAY19	336.00				336.00
RING J	649717/000SFCTRF/16MAY19	36.01				36.01
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**From:** [Carrasco, Nelson](#)  
**To:** [SM-HR Request For Detail](#)  
**Subject:** EOI #19-001  
**Date:** Tuesday, May 28, 2019 5:40:40 PM  
**Attachments:** [Carrasco OCPA Detail Cover Letter.pdf](#)  
[Carrasco Resume for OCPA Detail.pdf](#)  
**(b) (6), (b) (2)**

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Hello,

Attached please find my application (cover letter, resume, and most recent performance appraisal) for the detail with the Office of Congressional and Public Affairs.

Please let me know if you need any other information.

Best,

Nelson

Nelson Carrasco

(b) (6)

Nelson.Carrasco@nlrb.gov

May 28, 2019

National Labor Relations Board  
hrrfd@nlrb.gov

Dear Reviewer,

I am writing to express my interest in the Congressional Liaison Specialist detail with the Office of Congressional and Public Affairs. Former Chairman Miscimarra detailed me to OCPA for 4 months in 2017, and I have continued doing occasional work for the Office. I believe this experience has provided me with the competencies required for the detail.

During the detail, I was the Agency's press point of contact. I drafted most of the press responses during that period, including those to national news organizations like Reuters, Politico, and Bloomberg News. I also helped explain the Agency's actions and processes to the media. I often had discussions with the Director of OCPA concerning the Agency's media strategies, and I drafted the Office's guide for responding to press inquiries. Every response, even "no comment," required me to consider how the media and the Agency's various stakeholders may view the response. Many of the responses required substantial behind-the-scenes work; for example, I collaborated with the Ethics office to answer questions related to Member Emanuel's recusals. In addition to press responses, I helped draft the press releases for the Board's high-profile cases, like the ones that issued at the end of Chairman Miscimarra's term. Regularly, the work required diplomacy as I interacted with people throughout the Agency with different interests, including Board Members, the General Counsel, Regional Directors, and attorneys in Headquarters.

Both during and after the detail, I have helped OCPA with other assignments. For example, in 2017, I assisted in responding to Congressional inquiries, and I helped with General Counsel Robb's confirmation. I also developed proposals for improving the Agency's outreach program in 2017, which I updated in October 2018 and April 2019. In both 2017 and 2018, I drafted the "Case Highlights" for the Agency's Performance and Accountability Report. Additionally, in 2017-2018, I recruited and supervised an intern who helped translate the Board's website to Spanish.

Overall, I believe the work at OCPA is crucial to informing the country about the NLRB and ensuring that the Agency maintains a positive reputation as a well-functioning institution that helps ensure labor peace and stability in the United States. I would be honored to help with that mission through a detail to OCPA.

Sincerely,

A handwritten signature in dark ink, appearing to read "Nelson Carrasco", with a long horizontal flourish extending to the right.

Nelson Carrasco

# Nelson Carrasco

(b) (6)

Nelson.Carrasco@nlrb.gov

## FEDERAL GOVERNMENT EXPERIENCE

### National Labor Relations Board

*Board-Side Attorney*, Headquarters, Washington, DC

August 2015 – Present

- Advise Board Members on appeals in unfair labor practice and representation cases; help draft legal decisions.
- Office of Congressional and Public Affairs Work:
  - Responded to the Agency's press inquiries from August 28, 2017 to January 1, 2018.
  - Created a proposal for the Agency's outreach initiatives in December 2017, October 2018, and April 2019.
  - Drafted the Agency's internal guide for responding to press inquiries in 2017.
  - Wrote the initial press releases for the major Board decisions in December 2017, like *The Boeing Company* and *Hy-Brand Industrial Contractors, Ltd.*
  - Composed the "Case Highlights" for the Agency's Performance and Accountability Report in 2017 and 2018.
  - Participated in the Agency's Web Council meetings from August 2017 to the present.
  - Developed plan to translate the nlrb.gov website to Spanish in 2017, and recruited and supervised intern who assisted with the project.
  - Assisted with General Counsel Robb's Senate confirmation in 2017.

*Board Agent (Intern)*, Region 5 Resident Office, Washington, DC

May – August 2014

- Investigated unfair labor practice cases and helped with a union election. Took affidavits from employers, unions, and employees. Wrote legal reports. Made successful recommendations to the Regional Director.

### U.S. Customs and Border Protection

*Program Manager*, Office of Field Operations, Washington, DC

October 2007 – August 2011

- Managed national programs dealing with the security of ports of entry. Drafted the Agency's initial strategic plan for export security. Helped create the Office of Port Security and the Outbound Programs and Policy Office. Created interagency workgroup to streamline vetting of airport staff. Agency representative for Port Security Grants.

*CBP Officer*, Office of Field Operations, Ottawa, Canada

August 2003 – October 2007

- Conducted immigration and customs inspections and interviewed NAFTA work-permit applicants. Worked with the U.S. Embassy and law-enforcement agencies on anti-terrorism cases.

## EDUCATION

*Juris Doctor*. Washington College of Law, American University, Washington, DC, May 2015.

*Master of Public Administration*. School of Public Affairs, American University, Washington, DC, May 2015.

*Master of Arts in Spanish: Latin American Studies*. College of Arts and Sciences, American University, Washington, DC, December 2010.

*Bachelor of Arts in University Studies*. College of Liberal Arts & Integrative Studies, University of New Mexico, Albuquerque, NM, May 2001.

## SELECTED HONORS

- "Exceptional" rating in every performance appraisal at the NLRB (2016 – present).
- 2014 Outstanding Law Student of the Year, D.C. Law Students in Court.
- 2011 Dean's Merit Scholarship, Washington College of Law.
- 2010 M.A. Scholarship, American University, College of Arts and Sciences.
- 2007 and 2006 anti-terrorism awards, U.S. Customs and Border Protection.

**Subject:** FW: 36th Annual Carl A. Warns, Jr. & Edwin R. Render Labor and Employment Law Institute - SPEAKER  
INFORMATION

**Date:** Wednesday, May 29, 2019 11:27:11 AM

**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[Speaker Info Letter 2019.docx.doc](#)

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**From:** [Ring, John](#)  
**To:** [Bashford, Jo Ann](#)  
**Subject:** FW: 36th Annual Carl A. Warns, Jr. & Edwin R. Render Labor and Employment Law Institute - SPEAKER INFORMATION  
**Date:** Wednesday, May 29, 2019 11:28:00 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[Speaker Info Letter 2019.docx.doc](#)

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These are the things I need you to keep track of for me. Can you send me what we sent to Sarah Lamar.

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**From:** Cole, Tracie L. <[tracie.cole@louisville.edu](mailto:tracie.cole@louisville.edu)>  
**Sent:** Wednesday, May 29, 2019 11:23 AM  
**To:** Ring, John <[John.Ring@nlrb.gov](mailto:John.Ring@nlrb.gov)>  
**Subject:** FW: 36th Annual Carl A. Warns, Jr. & Edwin R. Render Labor and Employment Law Institute - SPEAKER INFORMATION  
**Importance:** High

Chairman Ring,

Please be advised that I need to get your CLE materials for the Warns – Render event as soon as possible as the due date was May 27<sup>th</sup>. Please send to me at your earliest opportunity.

Thank you,

Tracie

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**From:** Cole, Tracie L. <[tracie.cole@louisville.edu](mailto:tracie.cole@louisville.edu)>  
**Sent:** Tuesday, May 14, 2019 11:30 AM  
**To:** Cole, Tracie L. <[tracie.cole@louisville.edu](mailto:tracie.cole@louisville.edu)>  
**Subject:** 36th Annual Carl A. Warns, Jr. & Edwin R. Render Labor and Employment Law Institute - SPEAKER INFORMATION  
**Importance:** High

Hello Warns Speakers,

This is a reminder that I need your bio and materials for the 2019 Warns - Render event scheduled in June. Thank you to those who have already sent me your information. If you have not, please do so by the due date of May 27, 2019, as requested in the attached "Speaker Info Letter". Also, remember to complete your Audiovisual Services Questionnaire at <http://louisville.edu/law/it/av-services-for-guests>. Please complete and submit the Audiovisual Services Questionnaire by Monday, May 27, 2019 as well.

As it gets closer to the event, please watch for a note with information regarding the speaker dinner

on Thursday, June 27, 2019.

See you soon,

Tracie

---

**From:** Cole, Tracie L.

**Sent:** Monday, April 1, 2019 12:06 PM

**To:** Cole, Tracie L. <[tracie.cole@louisville.edu](mailto:tracie.cole@louisville.edu)>

**Subject:** 36th Annual Carl A. Warns, Jr. & Edwin R. Render Labor and Employment Law Institute -  
SPEAKER INFORMATION

**Importance:** High

Dear 2019 Warns – Render Labor and Employment Law Speakers:

Thank you for agreeing to speak at the upcoming University of Louisville Brandeis School of Law's 36<sup>th</sup> Annual Carl A. Warns, Jr. & Edwin R. Render Labor and Employment Law Institute. We anticipate another successful year, thanks to all of you!

I have attached a preliminary schedule and information pertinent to you as a speaker. Please let me know if you have any questions, and I hope to hear from you soon.

Thank you,

Tracie

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**Tracie L. Cole** – Director, Law Resource Center & Events Coordinator, University of Louisville Brandeis School of Law  
[tracie.cole@louisville.edu](mailto:tracie.cole@louisville.edu) / +1-502-852-1230 [Tel] / +1-502-852-7299 [Fax]

Visit our website: [www.louisville.edu/law](http://www.louisville.edu/law)



April 1, 2019

Dear Warns - Render Speaker:

Thank you for agreeing to speak at the University Of Louisville Brandeis School Of Law's *36th Annual Carl A. Warns and Edwin R. Render Labor and Employment Law Institute*, June 27 – 28, 2019. I write to provide information about travel and lodging arrangements and request information from you.

**Travel and Lodging**

The hotel where the conference is being held:

Seelbach Hilton Louisville Hotel  
500 South Fourth Street  
Louisville, Kentucky, 40202

The School of Law **must** make hotel/airline arrangements on your behalf. Please contact Kristina Arnold at your earliest convenience, [kristina.arnold@louisville.edu](mailto:kristina.arnold@louisville.edu), 502-852-1669. If you have other travel related expenses, please be sure to save and submit receipts to us after the event.

**Speaker Bios and Materials**

Please complete and submit the following items by **May 27, 2019**:

- ☒ A one-page biography.
- ☒ Course materials, which must be provided to conference attendees to qualify for CLE credit. Course materials can include a detailed outline of your presentation, a reprint of an article addressing the topic of your presentation, PowerPoint's that link to more extensive information available online, or other similar materials.
- ☒ Audiovisual Services Questionnaire for Guest Speakers at <http://louisville.edu/law/it/av-services-for-guests>  
Please complete and submit the Audiovisual Services Questionnaire by **Monday, May 27, 2019**.
- ☒ Review the nine *Speaker Requirements* (scroll to next page).

Please remember to hold the evening of Thursday, June 27th for the speakers' dinner. More information will be forthcoming. We look forward to seeing you in June.

Sincerely,



Ariana Levinson  
Co-Chair, Warns - Render Institute Planning Committee

## SPEAKER REQUIREMENTS

- 1.) Relax and enjoy the opportunity to speak to a room full of knowledgeable colleagues! Your audience will be practicing labor and employment lawyers, with a smattering of HR and union officers. A joke, a funny story, an anecdote, or a personal aside often distinguishes the memorable presentation from a straightforward exposition on the law.
- 2.) Check in with the registration table 30 minutes in advance of your presentation. It is imperative that the Institute administrators know that all speakers are in place to coordinate any audio visual needs and avoid last minute confusion. This applies equally to local speakers.
- 3.) Presenters are given a three minute introduction by a member of the local bar, who also serves as timekeeper and moderator for the presentation. Being on site early allows the speaker and moderator to meet, contributing to a more personalized introduction. File your bio by the deadline so it can be forwarded to your moderator.
- 4.) The Warns Institute prides itself on presenting a full program of distinguished speakers and panelists, assuring that each has the opportunity which was promised. Sessions start and end on time. Design and practice your presentation so it can be completed within the time allotted. The moderator, who will be seated at the podium, will give a 5 minute alert and is then charged with closing the presentation, respectfully, on schedule. The next speaker and moderator will be at the foot of the stage for a seamless transition.
- 5.) Time for questions is strongly encouraged. Your moderator will ask if you want to reserve time. If so, your presentation time should be altered accordingly, and you will get the 5 minute warning prior to the beginning of Q&A. If you would like to provide a question, the Institute administrators can insure that an audience member leads with your planted question. Additionally, moderators are encouraged to prepare a question to stimulate discussion.
- 6.) An interactive approach is also welcome. You can choose to take questions throughout and should feel free to pose questions to the audience (plan for a back-up to answer your own questions if the audience is shy). If you are interested in using an automated response system, the Institute administrators can work with you to see if this is feasible. This system enables the audience to respond to questions by pressing a number on their phone. Questions can be Y/N, T/F or Multiple Choice.
- 7.) If your presentation takes a multistate perspective, customize to include Kentucky's perspective on those same issues.
- 8.) Materials will be available to attendees online. Visual presentation of quotes, charts or other graphics will be most effective without reference to the written materials.
- 9.) If you use visuals, such as PowerPoint, try the following to enhance your presentation. 1) Use a black on white or white on black format for ease of viewing. Avoid red and green which are difficult for the color blind. 2) For text, use short phrases rather than full sentences. 3) When using quotations or excerpts, place them in large font and provide time for the audience to read them. 4) Vary the format of the slides and integrate visuals other than simply text.



**From:** [Cole, Tracie L.](#)  
**To:** [Ring, John](#)  
**Subject:** FW: 36th Annual Carl A. Warns, Jr. & Edwin R. Render Labor and Employment Law Institute - SPEAKER INFORMATION  
**Date:** Wednesday, May 29, 2019 11:25:22 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[Speaker Info Letter 2019.docx.doc](#)

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Thank you,

Tracie

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**Sent:** Tuesday, May 14, 2019 11:30 AM  
**To:** Cole, Tracie L. <[tracie.cole@louisville.edu](mailto:tracie.cole@louisville.edu)>  
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**Importance:** High

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**To:** Cole, Tracie L. <[tracie.cole@louisville.edu](mailto:tracie.cole@louisville.edu)>  
**Subject:** 36th Annual Carl A. Warns, Jr. & Edwin R. Render Labor and Employment Law Institute -

workforce, the NLRB Union said in a recent [letter](#) to Congress.

The planned restructuring would affect roughly 100 workers in positions such as assistant to the regional director, docket clerk, case-processing assistant, and elections clerk.

The plan would effectively eliminate almost all of those positions and place employees who currently hold the posts into a new hybrid position at a GS 6 grade level. Agency heads have indicated that employees who are currently classified at a higher pay grade than GS 6 would retain their salary, according to the union's message to staff.

The plan includes training the new program support assistants to perform all the duties of the various other positions, the union said.

"The intent to demote GS 7s is extremely mean-spirited, at best, and we intend to make all efforts to either stop this from occurring, or, if we cannot legally accomplish that, to put in place as many protections as possible for those affected," Burt Pearlstone, president of the NLRB's field staff union, said in the message to members.

Roughly 90% of the agency's field staff signed a petition opposing leadership's plans for administrative workers, Pearlstone told Bloomberg Law May 29.

The NLRB is also dealing with attrition among some key staffers at the headquarters in Washington, D.C. The agency's congressional liaison recently left for a new opportunity, and its director of congressional and public affairs is planning to leave the NLRB this summer—which could leave the agency without a press shop for at least some time.

The latest restructuring plan won't affect the agency's "language specialists" or its "compliance assistants," who are responsible for ensuring that parties carry out the NLRB's orders and remedies after the members rule on a dispute.

To contact the reporter on this story: Hassan A. Kanu in Washington at

[hkanu@bloomberglaw.com](mailto:hkanu@bloomberglaw.com)

To contact the editors responsible for this story: Simon Nadel at

[snadel@bloomberglaw.com](mailto:snadel@bloomberglaw.com); Terence Hyland at [thyland@bloomberglaw.com](mailto:thyland@bloomberglaw.com)



**To:** [Bashford, Jo Ann](#)  
**Subject:** FW: "OECD members, including U.S., back guiding principles to make AI safer"  
**Date:** Tuesday, June 4, 2019 1:51:46 PM  
**Attachments:** [Going Digital - OECD.pdf](#)  
[OECD Recommendations on AI \(May 2019\).pdf](#)

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Next week...could you print this and put in my NYU file.

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**From:** Whitman, Torrey <WhitmanT@mercury.law.nyu.edu>  
**Sent:** Wednesday, May 29, 2019 8:43 AM  
**To:** labor.center@nyu.edu  
**Subject:** "OECD members, including U.S., back guiding principles to make AI safer"

Dear NYU Annual Labor Conference Panelist,

I am sure most of you are aware of last week's OECD action, summarized in the Reuters headline quoted in the subject line above, but for those who may not be, I thought you would find the attached items of interest and relevance to the conference topic. As the OECD says on its website:

22/05/2019 - OECD and partner countries formally adopted the first set of intergovernmental policy guidelines on Artificial Intelligence (AI) today, agreeing to uphold international standards that aim to ensure AI systems are designed to be robust, safe, fair and trustworthy.

... [T]he Principles comprise five values-based principles for the responsible deployment of trustworthy AI and five recommendations for public policy and international co-operation. They aim to guide governments, organisations and individuals in designing and running AI systems in a way that puts people's best interests first and ensuring that designers and operators are held accountable for their proper functioning.

"Artificial Intelligence is revolutionising the way we live and work, and offering extraordinary benefits for our societies and economies. Yet, it raises new challenges and is also fuelling anxieties and ethical concerns. This puts the onus on governments to ensure that AI systems are designed in a way that respects our values and laws, so people can trust that their safety and privacy will be paramount," said OECD Secretary-General Angel Gurría. "These Principles will be a global reference point for trustworthy AI so that we can harness its opportunities in a way that delivers the best outcomes for all." ([Read the full speech.](#))

The AI Principles have the backing of the European Commission, whose high-level expert group has produced Ethics Guidelines for Trustworthy AI, and they will be part of the discussion at the forthcoming G20 Leaders' Summit in Japan. The OECD's digital policy experts will build on the Principles in the months ahead to produce practical guidance for implementing them.

While not legally binding, existing OECD Principles in other policy areas have proved highly influential in setting international standards and helping governments to design national legislation. ...

.... **In summary, they state that:**

1. AI should benefit people and the planet by driving inclusive growth, sustainable development and well-being.

2. AI systems should be designed in a way that respects the rule of law, human rights, democratic values and diversity, and they should include appropriate safeguards – for example, enabling human intervention where necessary – to ensure a fair and just society.
3. There should be transparency and responsible disclosure around AI systems to ensure that people understand when they are engaging with them and can challenge outcomes.
4. AI systems must function in a robust, secure and safe way throughout their lifetimes, and potential risks should be continually assessed and managed.
5. Organisations and individuals developing, deploying or operating AI systems should be held accountable for their proper functioning in line with the above principles.

**The OECD recommends that governments:**

- Facilitate public and private investment in research & development to spur innovation in trustworthy AI.
- Foster accessible AI ecosystems with digital infrastructure and technologies, and mechanisms to share data and knowledge.
- Create a policy environment that will open the way to deployment of trustworthy AI systems.
- Equip people with the skills for AI and support workers to ensure a fair transition.
- Co-operate across borders and sectors to share information, develop standards and work towards responsible stewardship of AI.

Torrey

---

Torrey L. Whitman  
Executive Director, Institute of Judicial Administration, and  
Director of Operations, Center for Labor and Employment Law  
New York University School of Law  
Wilf Hall, Room 409  
139 Macdougall Street  
New York, NY 10012

Office: 212-998-6149  
Fax: 212-995-4769

**From:** [Whitman, Torrey](#)  
**To:** [labor.center@nyu.edu](mailto:labor.center@nyu.edu)  
**Subject:** "OECD members, including U.S., back guiding principles to make AI safer"  
**Date:** Wednesday, May 29, 2019 8:44:17 AM  
**Attachments:** [Going Digital - OECD.pdf](#)  
[OECD Recommendations on AI \(May 2019\).pdf](#)

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"Artificial Intelligence is revolutionising the way we live and work, and offering extraordinary benefits for our societies and economies. Yet, it raises new challenges and is also fuelling anxieties and ethical concerns. This puts the onus on governments to ensure that AI systems are designed in a way that respects our values and laws, so people can trust that their safety and privacy will be paramount," said OECD Secretary-General Angel Gurría. "These Principles will be a global reference point for trustworthy AI so that we can harness its opportunities in a way that delivers the best outcomes for all." ([Read the full speech.](#))

The AI Principles have the backing of the European Commission, whose high-level expert group has produced Ethics Guidelines for Trustworthy AI, and they will be part of the discussion at the forthcoming G20 Leaders' Summit in Japan. The OECD's digital policy experts will build on the Principles in the months ahead to produce practical guidance for implementing them.

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- Co-operate across borders and sectors to share information, develop standards and work towards responsible stewardship of AI.

Torrey

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Torrey L. Whitman  
Executive Director, Institute of Judicial Administration, and  
Director of Operations, Center for Labor and Employment Law  
New York University School of Law  
Wilf Hall, Room 409  
139 Macdougall Street  
New York, NY 10012

Office: 212-998-6149  
Fax: 212-995-4769

## Forty-two countries adopt new OECD Principles on Artificial Intelligence

22/05/2019 - OECD and partner countries formally adopted the first set of intergovernmental policy guidelines on Artificial Intelligence (AI) today, agreeing to uphold international standards that aim to ensure AI systems are designed to be robust, safe, fair and trustworthy.

The OECD's 36 member countries, along with Argentina, Brazil, Colombia, Costa Rica, Peru and Romania, signed up to the **OECD Principles on Artificial Intelligence** at the Organisation's annual Ministerial Council Meeting, taking place today and tomorrow in Paris and focused this year on "Harnessing the Digital Transition for Sustainable Development". Elaborated with guidance from an expert group formed by more than 50 members from governments, academia, business, civil society, international bodies, the tech community and trade unions, the Principles comprise five values-based principles for the responsible deployment of trustworthy AI and five recommendations for public policy and international co-operation. They aim to guide governments, organisations and individuals in designing and running AI systems in a way that puts people's best interests first and ensuring that designers and operators are held accountable for their proper functioning.

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While not legally binding, existing OECD Principles in other policy areas have proved highly influential in setting international standards and helping governments to design national legislation. For example, the OECD Privacy Guidelines, which set limits to the collection and use of personal data, underlie many privacy laws and frameworks in the United States, Europe and Asia. The G20-endorsed OECD Principles of Corporate Governance have become an international benchmark for policy makers, investors, companies and other stakeholders working on institutional and regulatory frameworks for corporate governance.

**Download the AI Principles in full. In summary, they state that:**

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- Co-operate across borders and sectors to share information, develop standards and work towards responsible stewardship of AI.

For further details, journalists are invited to contact Catherine Bremer in the OECD Media Office (+33 1 45 24 80 97).

More on the OECD's work on Artificial Intelligence: [www.oecd.org/going-digital/ai/](http://www.oecd.org/going-digital/ai/).



*Working with over 100 countries, the OECD is a global policy forum that promotes policies to improve the economic and social well-being of people around the world.*

[42カ国がOECDの人工知能に関する新原則を採択](#)

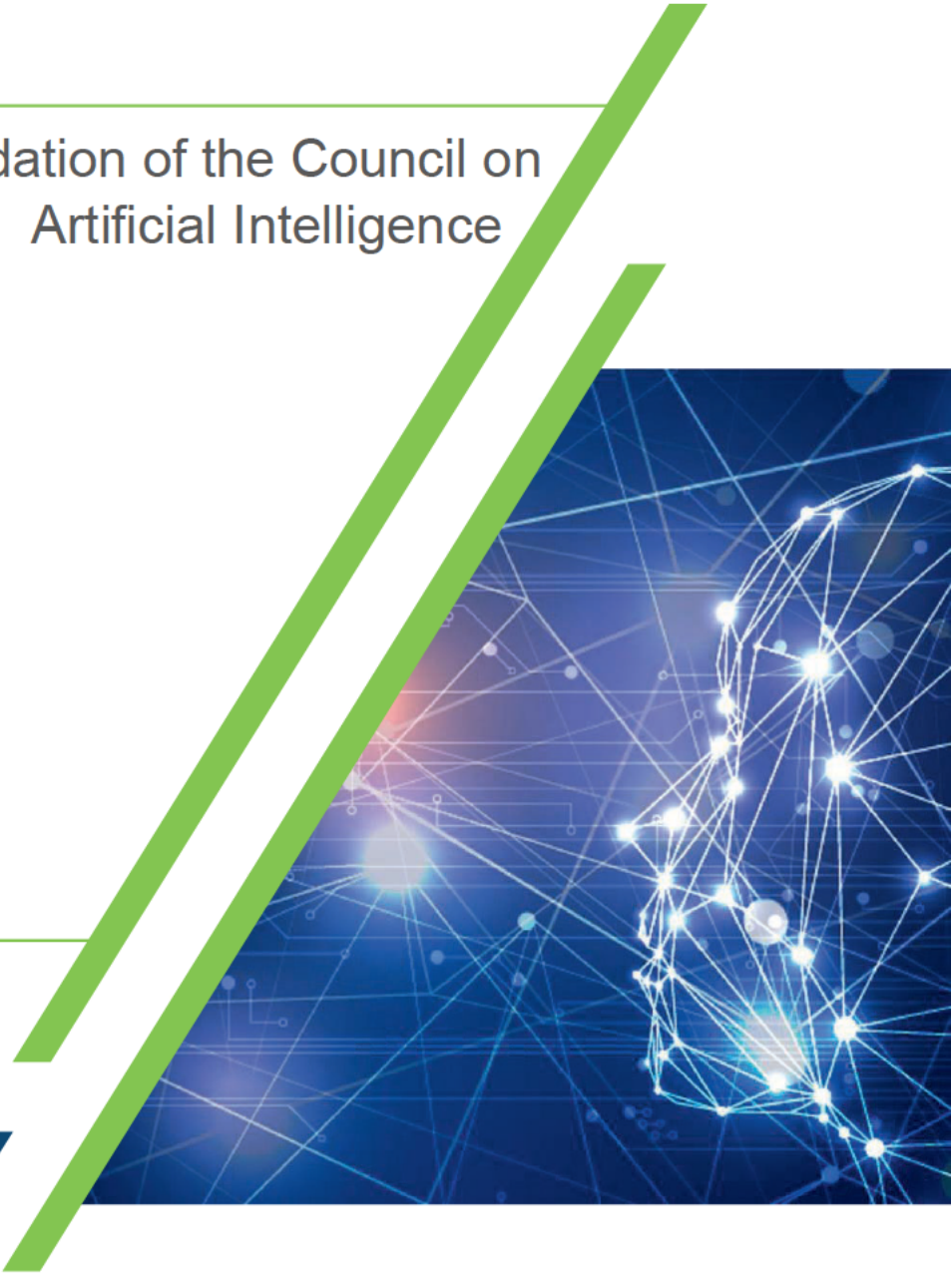
[Cuarenta y dos países adoptan los Principios de la OCDE sobre Inteligencia Artificial](#)

[42 Länder einigen sich auf Standards im Umgang mit künstlicher Intelligenz](#)



# Recommendation of the Council on Artificial Intelligence

**OECD Legal  
Instruments**



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## Date(s)

Adopted on 22/05/2019

## Background Information

The Recommendation on Artificial Intelligence (AI) – the first intergovernmental standard on AI – was adopted by the OECD Council at Ministerial level on 22 May 2019 on the proposal of the Committee on Digital Economy Policy (CDEP). The Recommendation aims to foster innovation and trust in AI by promoting the responsible stewardship of trustworthy AI while ensuring respect for human rights and democratic values. Complementing existing OECD standards in areas such as privacy, digital security risk management, and responsible business conduct, the Recommendation focuses on AI-specific issues and sets a standard that is implementable and sufficiently flexible to stand the test of time in this rapidly evolving field.

The Recommendation identifies five complementary values-based principles for the responsible stewardship of trustworthy AI and calls on AI actors to promote and implement them:

- inclusive growth, sustainable development and well-being;
- human-centred values and fairness;
- transparency and explainability;
- robustness, security and safety;
- and accountability.

In addition to and consistent with these value-based principles, the Recommendation also provides five recommendations to policy-makers pertaining to national policies and international co-operation for trustworthy AI, namely:

- investing in AI research and development;
- fostering a digital ecosystem for AI;
- shaping an enabling policy environment for AI;
- building human capacity and preparing for labour market transformation;
- and international co-operation for trustworthy AI.

The Recommendation also includes a provision for the development of metrics to measure AI research, development and deployment, and for building an evidence base to assess progress in its implementation.

### ***The OECD's work on Artificial Intelligence and rationale for developing the OECD Recommendation on Artificial Intelligence***

Artificial Intelligence (AI) is a general-purpose technology that has the potential to improve the welfare and well-being of people, to contribute to positive sustainable global economic activity, to increase innovation and productivity, and to help respond to key global challenges. It is deployed in many sectors ranging from production, finance and transport to healthcare and security.

Alongside benefits, AI also raises challenges for our societies and economies, notably regarding economic shifts and inequalities, competition, transitions in the labour market, and implications for democracy and human rights.

The OECD has undertaken empirical and policy activities on AI in support of the policy debate over the past two years, starting with a Technology Foresight Forum on AI in 2016 and an international conference on *AI: Intelligent Machines, Smart Policies* in 2017. The Organisation also conducted analytical and measurement work that provides an overview of the AI technical landscape, maps economic and social impacts of AI technologies and their applications, identifies major policy considerations, and describes AI initiatives from governments and other stakeholders at national and international levels.

This work has demonstrated the need to shape a stable policy environment at the international level to foster trust in and adoption of AI in society. Against this background, the OECD Committee on Digital Economy Policy (CDEP) agreed to develop a draft Council Recommendation to promote a human-centric approach to trustworthy AI, that fosters research, preserves economic incentives to innovate, and applies to all stakeholders.

Complementing existing OECD standards already relevant to AI – such as those on privacy and data protection, digital security risk management, and responsible business conduct – the Recommendation focuses on policy issues that are specific to AI and strives to set a standard that is implementable and flexible enough to stand the test of time in a rapidly evolving field. The Recommendation contains five high-level values-based principles and five recommendations for national policies and international co-operation. It also proposes a common understanding of key terms, such as “AI system” and “AI actors”, for the purposes of the Recommendation.

More specifically, the Recommendation includes two substantive sections:

1. **Principles for responsible stewardship of trustworthy AI:** the first section sets out five complementary principles relevant to all stakeholders: *i)* inclusive growth, sustainable development and well-being; *ii)* human-centred values and fairness; *iii)* transparency and explainability; *iv)* robustness, security and safety; and *v)* accountability. This section further calls on AI actors to promote and implement these principles according to their roles.
2. **National policies and international co-operation for trustworthy AI:** consistent with the five aforementioned principles, this section provides five recommendations to Members and non-Members having adhered to the draft Recommendation (hereafter the “Adherents”) to implement in their national policies and international co-operation: *i)* investing in AI research and development; *ii)* fostering a digital ecosystem for AI; *iii)* shaping an enabling policy environment for AI; *iv)* building human capacity and preparing for labour market transformation; and *v)* international co-operation for trustworthy AI.

### ***An inclusive and participatory process for developing the Recommendation***

The development of the Recommendation was participatory in nature, incorporating input from a broad range of sources throughout the process. In May 2018, the CDEP agreed to form an expert group to scope principles to foster trust in and adoption of AI, with a view to developing a draft Council Recommendation in the course of 2019. The AI Group of experts at the OECD (AIGO) was subsequently established, comprising over 50 experts from different disciplines and different sectors (government, industry, civil society, trade unions, the technical community and academia) - see <http://www.oecd.org/going-digital/ai/oecd-aigo-membership-list.pdf> for the full list. Between September 2018 and February 2019 the group held four meetings: in Paris, France, in September and November 2018, in Cambridge, MA, United States, at the Massachusetts Institute of Technology (MIT) in January 2019, back to back with the MIT AI Policy Congress, and finally in Dubai, United Arab Emirates, at the World Government Summit in February 2019. The work benefited from the diligence, engagement and substantive contributions of the experts participating in AIGO, as well as from their multi-stakeholder and multidisciplinary backgrounds.

Drawing on the final output document of the AIGO, a draft Recommendation was developed in the CDEP and with the consultation of other relevant OECD bodies. The CDEP approved a final draft Recommendation and agreed to transmit it to the OECD Council for adoption in a special meeting on 14-15 March 2019. The OECD Council adopted the Recommendation at its meeting at Ministerial level on 22-23 May 2019.



### ***Follow-up, monitoring of implementation and dissemination tools***

The OECD Recommendation on AI provides the first intergovernmental standard for AI policies and a foundation on which to conduct further analysis and develop tools to support governments in their implementation efforts. In this regard, it instructs the CDEP to monitor the implementation of the Recommendation and report to the Council on its implementation and continued relevance five years after its adoption and regularly thereafter. The CDEP is also instructed to continue its work on AI, building on this Recommendation, and taking into account work in other international fora, such as UNESCO, the Council of Europe and the initiative to build an International Panel on AI (see <https://pm.gc.ca/eng/news/2018/12/06/mandate-international-panel-artificial-intelligence> and <https://www.gouvernement.fr/en/france-and-canada-create-new-expert-international-panel-on-artificial-intelligence>).

In order to support implementation of the Recommendation, the Council instructed the CDEP to develop practical guidance for implementation, to provide a forum for exchanging information on AI policy and activities, and to foster multi-stakeholder and interdisciplinary dialogue. This will be achieved largely through the OECD AI Policy Observatory, an inclusive hub for public policy on AI that aims to help countries encourage, nurture and monitor the responsible development of trustworthy artificial intelligence systems for the benefit of society. It will combine resources from across the OECD with those of partners from all stakeholder groups to provide multidisciplinary, evidence-based policy analysis on AI. The Observatory is planned to be launched late 2019 and will include a live database of AI strategies, policies and initiatives that countries and other stakeholders can share and update, enabling the comparison of their key elements in an interactive manner. It will also be continuously updated with AI metrics, measurements, policies and good practices that could lead to further updates in the practical guidance for implementation.

The Recommendation is open to non-OECD Member adherence, underscoring the global relevance of OECD AI policy work as well as the Recommendation's call for international co-operation.

Unofficial translation(s): [German](#).

*For further information please consult:* [oecd.ai](#).

*Contact information:* [ai@oecd.org](mailto:ai@oecd.org).

## **THE COUNCIL,**

**HAVING REGARD** to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

**HAVING REGARD** to the OECD Guidelines for Multinational Enterprises [[OECD/LEGAL/0144](#)]; Recommendation of the Council concerning Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data [[OECD/LEGAL/0188](#)]; Recommendation of the Council concerning Guidelines for Cryptography Policy [[OECD/LEGAL/0289](#)]; Recommendation of the Council for Enhanced Access and More Effective Use of Public Sector Information [[OECD/LEGAL/0362](#)]; Recommendation of the Council on Digital Security Risk Management for Economic and Social Prosperity [[OECD/LEGAL/0415](#)]; Recommendation of the Council on Consumer Protection in E-commerce [[OECD/LEGAL/0422](#)]; Declaration on the Digital Economy: Innovation, Growth and Social Prosperity (Cancún Declaration) [[OECD/LEGAL/0426](#)]; Declaration on Strengthening SMEs and Entrepreneurship for Productivity and Inclusive Growth [[OECD/LEGAL/0439](#)]; as well as the 2016 Ministerial Statement on Building more Resilient and Inclusive Labour Markets, adopted at the OECD Labour and Employment Ministerial Meeting;

**HAVING REGARD** to the Sustainable Development Goals set out in the 2030 Agenda for Sustainable Development adopted by the United Nations General Assembly (A/RES/70/1) as well as the 1948 Universal Declaration of Human Rights;

**HAVING REGARD** to the important work being carried out on artificial intelligence (hereafter, “AI”) in other international governmental and non-governmental fora;

**RECOGNISING** that AI has pervasive, far-reaching and global implications that are transforming societies, economic sectors and the world of work, and are likely to increasingly do so in the future;

**RECOGNISING** that AI has the potential to improve the welfare and well-being of people, to contribute to positive sustainable global economic activity, to increase innovation and productivity, and to help respond to key global challenges;

**RECOGNISING** that, at the same time, these transformations may have disparate effects within, and between societies and economies, notably regarding economic shifts, competition, transitions in the labour market, inequalities, and implications for democracy and human rights, privacy and data protection, and digital security;

**RECOGNISING** that trust is a key enabler of digital transformation; that, although the nature of future AI applications and their implications may be hard to foresee, the trustworthiness of AI systems is a key factor for the diffusion and adoption of AI; and that a well-informed whole-of-society public debate is necessary for capturing the beneficial potential of the technology, while limiting the risks associated with it;

**UNDERLINING** that certain existing national and international legal, regulatory and policy frameworks already have relevance to AI, including those related to human rights, consumer and personal data protection, intellectual property rights, responsible business conduct, and competition, while noting that the appropriateness of some frameworks may need to be assessed and new approaches developed;

**RECOGNISING** that given the rapid development and implementation of AI, there is a need for a stable policy environment that promotes a human-centric approach to trustworthy AI, that fosters research, preserves economic incentives to innovate, and that applies to all stakeholders according to their role and the context;

**CONSIDERING** that embracing the opportunities offered, and addressing the challenges raised, by AI applications, and empowering stakeholders to engage is essential to fostering adoption of trustworthy AI in society, and to turning AI trustworthiness into a competitive parameter in the global marketplace;

## On the proposal of the Committee on Digital Economy Policy:

I. **AGREES** that for the purpose of this Recommendation the following terms should be understood as follows:

- *AI system*: An AI system is a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. AI systems are designed to operate with varying levels of autonomy.
- *AI system lifecycle*: AI system lifecycle phases involve: i) 'design, data and models'; which is a context-dependent sequence encompassing planning and design, data collection and processing, as well as model building; ii) 'verification and validation'; iii) 'deployment'; and iv) 'operation and monitoring'. These phases often take place in an iterative manner and are not necessarily sequential. The decision to retire an AI system from operation may occur at any point during the operation and monitoring phase.
- *AI knowledge*: AI knowledge refers to the skills and resources, such as data, code, algorithms, models, research, know-how, training programmes, governance, processes and best practices, required to understand and participate in the AI system lifecycle.
- *AI actors*: AI actors are those who play an active role in the AI system lifecycle, including organisations and individuals that deploy or operate AI.
- *Stakeholders*: Stakeholders encompass all organisations and individuals involved in, or affected by, AI systems, directly or indirectly. AI actors are a subset of stakeholders.

### Section 1: Principles for responsible stewardship of trustworthy AI

II. **RECOMMENDS** that Members and non-Members adhering to this Recommendation (hereafter the "Adherents") promote and implement the following principles for responsible stewardship of trustworthy AI, which are relevant to all stakeholders.

III. **CALLS ON** all AI actors to promote and implement, according to their respective roles, the following Principles for responsible stewardship of trustworthy AI.

IV. **UNDERLINES** that the following principles are complementary and should be considered as a whole.

#### 1.1. Inclusive growth, sustainable development and well-being

Stakeholders should proactively engage in responsible stewardship of trustworthy AI in pursuit of beneficial outcomes for people and the planet, such as augmenting human capabilities and enhancing creativity, advancing inclusion of underrepresented populations, reducing economic, social, gender and other inequalities, and protecting natural environments, thus invigorating inclusive growth, sustainable development and well-being.

#### 1.2. Human-centred values and fairness

- a) AI actors should respect the rule of law, human rights and democratic values, throughout the AI system lifecycle. These include freedom, dignity and autonomy, privacy and data protection, non-discrimination and equality, diversity, fairness, social justice, and internationally recognised labour rights.
- b) To this end, AI actors should implement mechanisms and safeguards, such as capacity for human determination, that are appropriate to the context and consistent with the state of art.



### **1.3. Transparency and explainability**

AI Actors should commit to transparency and responsible disclosure regarding AI systems. To this end, they should provide meaningful information, appropriate to the context, and consistent with the state of art:

- i. to foster a general understanding of AI systems,
- ii. to make stakeholders aware of their interactions with AI systems, including in the workplace,
- iii. to enable those affected by an AI system to understand the outcome, and,
- iv. to enable those adversely affected by an AI system to challenge its outcome based on plain and easy-to-understand information on the factors, and the logic that served as the basis for the prediction, recommendation or decision.

### **1.4. Robustness, security and safety**

- a) AI systems should be robust, secure and safe throughout their entire lifecycle so that, in conditions of normal use, foreseeable use or misuse, or other adverse conditions, they function appropriately and do not pose unreasonable safety risk.
- b) To this end, AI actors should ensure traceability, including in relation to datasets, processes and decisions made during the AI system lifecycle, to enable analysis of the AI system's outcomes and responses to inquiry, appropriate to the context and consistent with the state of art.
- c) AI actors should, based on their roles, the context, and their ability to act, apply a systematic risk management approach to each phase of the AI system lifecycle on a continuous basis to address risks related to AI systems, including privacy, digital security, safety and bias.

### **1.5. Accountability**

AI actors should be accountable for the proper functioning of AI systems and for the respect of the above principles, based on their roles, the context, and consistent with the state of art.

## **Section 2: National policies and international co-operation for trustworthy AI**

**V. RECOMMENDS** that Adherents implement the following recommendations, consistent with the principles in section 1, in their national policies and international co-operation, with special attention to small and medium-sized enterprises (SMEs).

### **2.1. Investing in AI research and development**

- a) Governments should consider long-term public investment, and encourage private investment, in research and development, including interdisciplinary efforts, to spur innovation in trustworthy AI that focus on challenging technical issues and on AI-related social, legal and ethical implications and policy issues.
- b) Governments should also consider public investment and encourage private investment in open datasets that are representative and respect privacy and data protection to support an environment for AI research and development that is free of inappropriate bias and to improve interoperability and use of standards.

### **2.2. Fostering a digital ecosystem for AI**

Governments should foster the development of, and access to, a digital ecosystem for trustworthy AI. Such an ecosystem includes in particular digital technologies and infrastructure, and mechanisms for sharing AI

knowledge, as appropriate. In this regard, governments should consider promoting mechanisms, such as data trusts, to support the safe, fair, legal and ethical sharing of data.

### **2.3. Shaping an enabling policy environment for AI**

- a) Governments should promote a policy environment that supports an agile transition from the research and development stage to the deployment and operation stage for trustworthy AI systems. To this effect, they should consider using experimentation to provide a controlled environment in which AI systems can be tested, and scaled-up, as appropriate.
- b) Governments should review and adapt, as appropriate, their policy and regulatory frameworks and assessment mechanisms as they apply to AI systems to encourage innovation and competition for trustworthy AI.

### **2.4. Building human capacity and preparing for labour market transformation**

- a) Governments should work closely with stakeholders to prepare for the transformation of the world of work and of society. They should empower people to effectively use and interact with AI systems across the breadth of applications, including by equipping them with the necessary skills.
- b) Governments should take steps, including through social dialogue, to ensure a fair transition for workers as AI is deployed, such as through training programmes along the working life, support for those affected by displacement, and access to new opportunities in the labour market.
- c) Governments should also work closely with stakeholders to promote the responsible use of AI at work, to enhance the safety of workers and the quality of jobs, to foster entrepreneurship and productivity, and aim to ensure that the benefits from AI are broadly and fairly shared.

### **2.5. International co-operation for trustworthy AI**

- a) Governments, including developing countries and with stakeholders, should actively co-operate to advance these principles and to progress on responsible stewardship of trustworthy AI.
- b) Governments should work together in the OECD and other global and regional fora to foster the sharing of AI knowledge, as appropriate. They should encourage international, cross-sectoral and open multi-stakeholder initiatives to garner long-term expertise on AI.
- c) Governments should promote the development of multi-stakeholder, consensus-driven global technical standards for interoperable and trustworthy AI.
- d) Governments should also encourage the development, and their own use, of internationally comparable metrics to measure AI research, development and deployment, and gather the evidence base to assess progress in the implementation of these principles.

**VI. INVITES** the Secretary-General and Adherents to disseminate this Recommendation.

**VII. INVITES** non-Adherents to take due account of, and adhere to, this Recommendation.

**VIII. INSTRUCTS** the Committee on Digital Economy Policy:

- a) to continue its important work on artificial intelligence building on this Recommendation and taking into account work in other international fora, and to further develop the measurement framework for evidence-based AI policies;
- b) to develop and iterate further practical guidance on the implementation of this Recommendation, and to report to the Council on progress made no later than end December 2019;
- c) to provide a forum for exchanging information on AI policy and activities including experience with the implementation of this Recommendation, and to foster multi-stakeholder and interdisciplinary dialogue to promote trust in and adoption of AI; and

- d) to monitor, in consultation with other relevant Committees, the implementation of this Recommendation and report thereon to the Council no later than five years following its adoption and regularly thereafter.

## Adherents\*

### OECD Members

Australia  
Austria  
Belgium  
Canada  
Chile  
Czech Republic  
Denmark  
Estonia  
Finland  
France  
Germany  
Greece  
Hungary  
Iceland  
Ireland  
Israel  
Italy  
Japan  
Korea  
Latvia  
Lithuania  
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Mexico  
Netherlands  
New Zealand  
Norway  
Poland  
Portugal  
Slovak Republic  
Slovenia  
Spain  
Sweden  
Switzerland  
Turkey  
United Kingdom

United States

### Non-Members

Argentina  
Brazil  
Colombia  
Costa Rica  
Peru  
Romania

### Other

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\* Additional information and statements are available in the Compendium of OECD Legal Instruments:  
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## About the OECD

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The OECD Member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

## OECD Legal Instruments

Since the creation of the OECD in 1961, around 450 substantive legal instruments have been developed within its framework. These include OECD Acts (i.e. the Decisions and Recommendations adopted by the OECD Council in accordance with the OECD Convention) and other legal instruments developed within the OECD framework (e.g. Declarations, international agreements).

All substantive OECD legal instruments, whether in force or abrogated, are listed in the online Compendium of OECD Legal Instruments. They are presented in five categories:

- **Decisions:** OECD legal instruments which are legally binding on all Members except those which abstain at the time of adoption. While they are not international treaties, they entail the same kind of legal obligations. Adherents are obliged to implement Decisions and must take the measures necessary for such implementation.
- **Recommendations:** OECD legal instruments which are not legally binding but practice accords them great moral force as representing the political will of Adherents. There is an expectation that Adherents will do their utmost to fully implement a Recommendation. Thus, Members which do not intend to do so usually abstain when a Recommendation is adopted, although this is not required in legal terms.
- **Declarations:** OECD legal instruments which are prepared within the Organisation, generally within a subsidiary body. They usually set general principles or long-term goals, have a solemn character and are usually adopted at Ministerial meetings of the Council or of committees of the Organisation.
- **International Agreements:** OECD legal instruments negotiated and concluded within the framework of the Organisation. They are legally binding on the Parties.
- **Arrangement, Understanding and Others:** several ad hoc substantive legal instruments have been developed within the OECD framework over time, such as the Arrangement on Officially Supported Export Credits, the International Understanding on Maritime Transport Principles and the Development Assistance Committee (DAC) Recommendations.

**From:** [Lucy, Christine B.](#)  
**To:** [Ring, John](#)  
**Subject:** Re: Bloomberg: Labor Board Restructuring Plan Includes Nationwide Demotions  
**Date:** Wednesday, May 29, 2019 5:57:19 PM

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(b) (5)

Christine Lucy  
Special Counsel and Chief of Staff  
to the Chairman of the NLRB

Sent from my iPhone

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**From:** Ring, John  
**Sent:** Wednesday, May 29, 2019 5:41:23 PM  
**To:** Lucy, Christine B.  
**Subject:** Fwd: Bloomberg: Labor Board Restructuring Plan Includes Nationwide Demotions

(b) (5)

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**From:** Martin, Andrew  
**Sent:** Wednesday, May 29, 2019 4:17:52 PM  
**Subject:** Bloomberg: Labor Board Restructuring Plan Includes Nationwide Demotions



## [Labor Board Restructuring Plan Includes Nationwide Demotions](#)

- Plan will promote some admin staff, demote others
- Agency union moves to challenge planned action

By Hassan A. Kanu | May 29, 2019 04:13PM ET | Bloomberg Law

The heads of the National Labor Relations Board are planning a restructure of administrative staff at the agency's roughly 26 regional offices, including demoting employees in certain job classifications nationwide.

The plan would reclassify almost all NLRB administrative professionals as general "program support assistants," and place those employees into the same grade within the government's General Schedule pay system, according to a notice from the NLRB Union to members obtained by Bloomberg Law. The move

**From:** [Lucy, Christine B.](#)  
**To:** [Ring, John](#)  
**Subject:** Re: Bloomberg: Labor Board Restructuring Plan Includes Nationwide Demotions  
**Date:** Wednesday, May 29, 2019 6:15:13 PM

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Will do.

Christine Lucy  
Special Counsel and Chief of Staff  
to the Chairman of the NLRB

Sent from my iPhone

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**From:** Ring, John  
**Sent:** Wednesday, May 29, 2019 6:12:00 PM  
**To:** Lucy, Christine B.  
**Subject:** RE: Bloomberg: Labor Board Restructuring Plan Includes Nationwide Demotions

(b) (5)



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**From:** Lucy, Christine B.  
**Sent:** Wednesday, May 29, 2019 5:57 PM  
**To:** Ring, John <John.Ring@nrlb.gov>  
**Subject:** Re: Bloomberg: Labor Board Restructuring Plan Includes Nationwide Demotions

(b) (5)



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The plan would reclassify almost all NLRB administrative professionals as general "program support assistants," and place those employees into the same grade within the government's General Schedule pay system, according to a notice from the NLRB Union to members obtained by Bloomberg Law. The move means some of those employees would receive an effective promotion, although over half of the workers would be demoted, with many dropping from a GS 7 to a GS 6 classification.

The restructuring of board field offices comes as the agency's career staff continues to [protest](#) what they've called an unprecedented staffing crisis, and shortly after Congress [signaled](#) an intent to raise the agency's budget for the first time in six years.

Democratic politicians and many among the career staff have suggested that recent staff [buyouts](#) and other decisions by the NLRB's Republican members and general counsel are another way to accomplish a far-reaching overhaul of the agency after certain initial proposals received strong criticism. The NLRB adjudicates certain workplace disputes between workers, unions, and employers, and also administers unionization elections.

The board has apparently pivoted from some of the earliest proposals by President Donald Trump's appointees to change how the agency operates, including a reported plan to consolidate regional offices and demote regional directors.

NLRB Chairman John Ring and top prosecutor Peter Robb have said that cuts and restructuring of staff and case procedures are necessary because of the NLRB's declining caseload and flat budget.

The agency declined to comment on the latest plans to reorganize administrative staffers.

### **Staff Opposed Move in Petition**

The NLRB had about 1,320 full-time employees at the end of fiscal year 2018. It lost about 18% of its field office staff between fiscal years 2011 and 2017. Staffing losses grew by an additional 17% in "just the two short years" since Office of Management and Budget Director Mick Mulvaney issued a memorandum directing agency heads to reduce the size of the civilian federal



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The planned restructuring would affect roughly 100 workers in positions such as assistant to the regional director, docket clerk, case-processing assistant, and elections clerk.

The plan would effectively eliminate almost all of those positions and place employees who currently hold the posts into a new hybrid position at a GS 6 grade level. Agency heads have indicated that employees who are currently classified at a higher pay grade than GS 6 would retain their salary, according to the union's message to staff.

The plan includes training the new program support assistants to perform all the duties of the various other positions, the union said.

"The intent to demote GS 7s is extremely mean-spirited, at best, and we intend to make all efforts to either stop this from occurring, or, if we cannot legally accomplish that, to put in place as many protections as possible for those affected," Burt Pearlstone, president of the NLRB's field staff union, said in the message to members.

Roughly 90% of the agency's field staff signed a petition opposing leadership's plans for administrative workers, Pearlstone told Bloomberg Law May 29.

The NLRB is also dealing with attrition among some key staffers at the headquarters in Washington, D.C. The agency's congressional liaison recently left for a new opportunity, and its director of congressional and public affairs is planning to leave the NLRB this summer—which could leave the agency without a press shop for at least some time.

The latest restructuring plan won't affect the agency's "language specialists" or its "compliance assistants," who are responsible for ensuring that parties carry out the NLRB's orders and remedies after the members rule on a dispute.

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